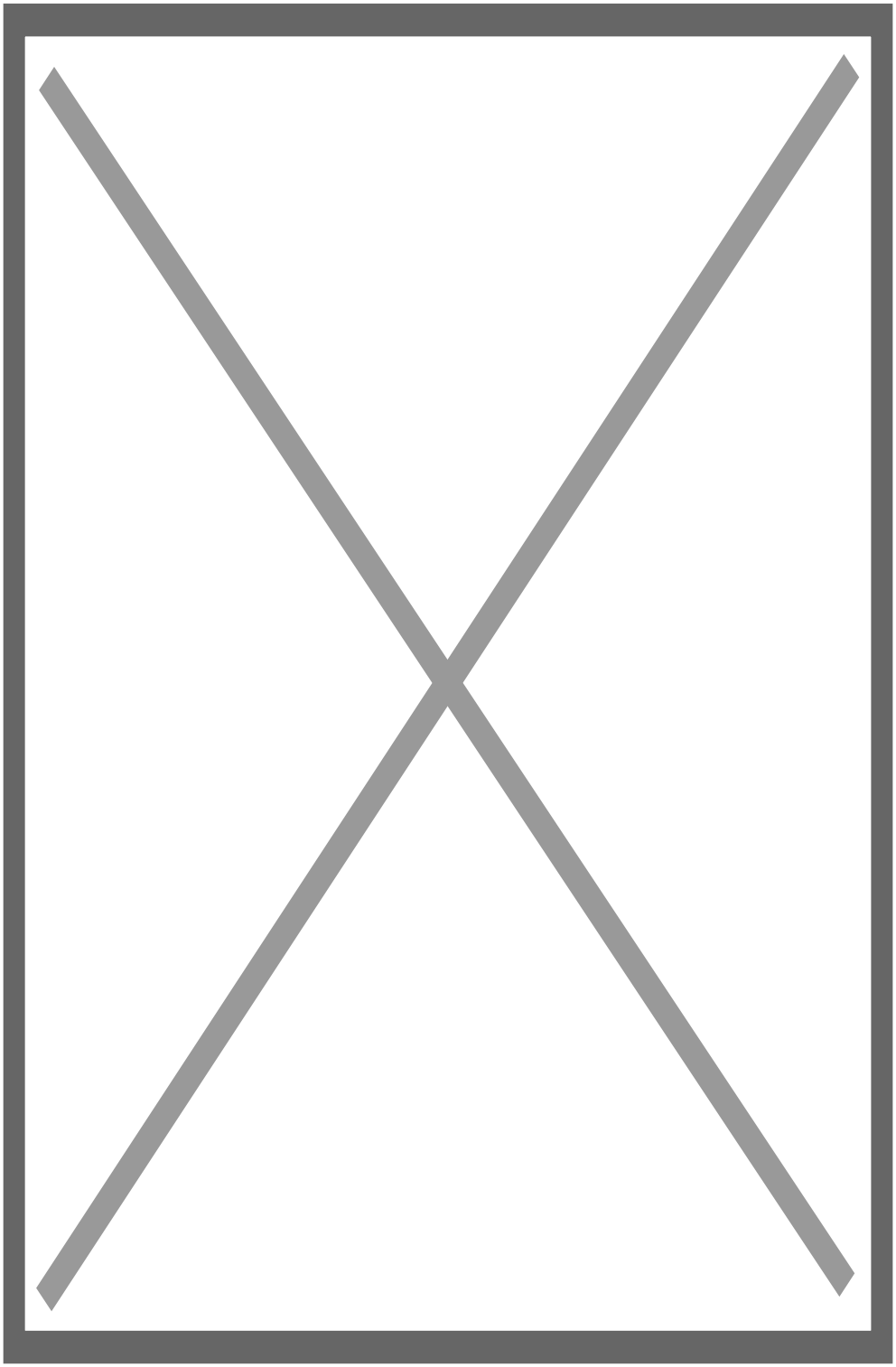
# Out of pocket

Personal tax



01 February 2015

Rebecca Benneyworth explains a practical issue of the High Income Child Benefit Charge

### Key Points

### What is the issue?

Where a taxpayer's annual income falls below £60,000 but is above £50,000 there is some entitlement to child benefit. A revocation of the election not to receive the benefit is necessary backdated to the start of the relevant tax year.

### What does it mean for me?

Because this is a binary choice, the child benefit will be paid in full for the relevant period. The taxpayer is then in the position of owing a partial HICBC, and needs to deal with the tax consequences promptly.

### What can I take away?

Its arguable that the penalty legislation cannot apply to the return because it was correct when 'given' to HMRC. However, this legislation was written when subsequent events could not affect the liability to tax for a particular year. Since the introduction of the HICBC this has become a thing of the past.

The tax charge imposed to withdraw child benefit from families on what is regarded as a 'high income' has been with us for more than two years, and most advisers will be used to the resultant extra work when preparing tax returns for clients.

The need to check the living arrangements of your client in the tax year concerned, then establish whether they or their partner received child benefit, and which partner's income is the higher is a challenge to deliver practically in a way that does not give rise to unbillable time. However, as we go forward with the charge, there is another aspect that may cause problems for both you and your clients.

When someone has elected not to receive child benefit because their or their partner's income is expected to exceed £60,000 a year on an ongoing basis, the difficulties of dealing with the facts set out above are minimal.

As long as the income continues to exceed £60,000 the child benefit would be fully clawed back by the charge, and therefore no action is required. Once an election has been made, it is effective on a continuing basis, so there is only a simple requirement to review the income of your client year by year to establish that the election should continue in force.

# A drop in income

It is assumed here that your client is the partner with the higher income, and there is no possibility that the other person's income will ever exceed £50,000.

Having completed the tax return, you have established that your client's adjusted net income for High Income Child Benefit Charge (HICBC) purposes is £46,000. The adjusted net income is defined by ITA 2007 s 58 (as

prescribed by ITEPA 2003 s 681H). This is the net income for the year, less the gross amount of gift aid payments made or treated as made in the year, less the gross sum of pension contributions paid that have been given relief at source.

As your client's income is below £50,000, there is an entitlement to the full amount of child benefit for the year concerned.

Payments of the benefit can be restarted at any point by completing an online form – more information and a link to the form is at www.tinyurl.com/qcegl67. However, this only provides for child benefit to be re-started at the earliest from the Monday after the application is made, so you or the client will need to contact the child benefit office to reinstate the payments for a prior period; a telephone contact number is provided on the GOV.UK website for this purpose.

The right to start payments from an earlier date (in effect backdating the revocation) is given by the Social Security Administration Act 1992 (SSAA 1992) s 13A(7) and (9), and there is equivalent legislation in Northern Ireland. This provides that a request can be made to reinstate payments for an earlier tax year if:

- the taxpayer orginally elected not to receive payment and did not receive payment for one or more weeks in a tax year;
- had an election not been made, neither the person now revoking the election nor any other person would have been liable to the HICBC in respect of the payments of chid benefit or, if they were, the charge would have been less than the child benefit payable for the relevant weeks; and
- notice is given within two years of the end relevant tax year.

However, the problem with this legislation now becomes clear – the election not to receive child benefit is simply a binary choice: either child benefit is paid in full or it is not. So in the particular case we are thinking about, the client's income, having fallen to £46,000, does not produce a HICBC when the election is revoked – you can safely notify the child benefit office and reinstate the entitlement for the relevant year.

Checking whether this needs to be done yearly, picked up when the tax return is reviewed. Noting this point for action when returns are being completed in January still leaves plenty of time to make the necessary revocation before the time limit expires, but perhaps after the January rush has subsided.

# Re-instating a partial claim

It is when your client's income exceeds £50,000 but not £60,000 that things get tricky – as illustrated in Example 1. There is some entitlement to child benefit, so a revocation of the election not to receive child benefit is necessary, backdated to the start of the relevant tax year. Because this is a binary choice, the benefit will then be paid in full for that period. Your client is then in the position of owing a partial HICBC, and needs to deal with the tax consequences.

Although your client's tax return was correct when it was submitted – it showed no HICBC for the relevant year – once a backdated payment of child benefit has been made, the return will contain an inaccuracy, in that only part of the

child benefit is due, with the balance to be clawed back by the HICBC. Note that the HICBC is not due until the payment of child benefit for the relevant year has been made by HMRC – this may be some time after the revocation notice was given.

## What of penalties?

The return was correct when submitted, and only became incorrect when the payment of backdated child benefit was made, so at this point the taxpayer is potentially affected by penalties for inaccurate returns under FA 2007 Sch 24 para 3(2) (Sch 24). This covers an inaccuracy in a document that was neither careless nor deliberate when it was given to HMRC, but is treated as careless if the taxpayer discovered the inaccuracy later and did not take reasonable steps to inform the Revenue. HMRC's Compliance Handbook does not prescribe a time limit before a penalty is appropriate under this legislation, but clearly a prompt reaction will be needed if the client is not to incur a penalty.

It is arguable that the penalty cannot apply because the return was correct when 'given' to HMRC. But the legislation was written when subsequent events could not affect the liability to tax for a particular year – since the introduction of the HICBC this is a thing of the past.

I consider it reasonable to assume that HMRC would seek to impose a penalty under Sch 24, so prompt attention to amending the return is a must – assuming that it is still in time to do so. If not, a standalone notice should be given to HMRC of the inaccuracy.

## Interest?

The really interesting aspect of this (if readers will forgive the pun) is interest. I have no doubt that any penalty for late payment of tax, if raised by an over-eager computer perhaps, would be covered by reasonable excuse. Indeed, one might argue that the tax is not due until the backdated payment of child benefit has been made.

It would also be fair to assume that interest could not be due on the 'late' payment because the tax was not due until the child benefit payments were made.

However, my personal experience in dealing with incorrect interest charges arising from simple misallocation of payments does not give me any confidence that time spent arguing about this with HMRC will be productive. Unfortunately, this type of issue seems to fall foul of the mentality that if the computer says interest is due it must be.

## Implement in haste, repent at leisure?

These provisions were widely criticised when they were drawn up – and many in the profession suggested other ways of achieving the same policy ends but without shoe-horning something of this nature into the tax system.

I have no doubt that civil servants' advice to ministers was that this was the simplest way to implement the reforms (and indeed raise the considerable extra revenue that this measure achieves). And for most taxpayers affected I am sure that it is worry free. But for me, it is the drip, drip undermining a complex but essentially stable income tax system. It represents a change that 'doesn't really work' in several ways: the steady erosion of certainty and the dependence of one person's tax liability on another person's income or circumstances, for example. This way lies more trouble than the government has probably realised.

## Example 1 – Peter

Peter is self-employed and has net adjusted income of £57,500 for the tax year 2013/14.

He is a single parent with four children under 16 living with him and had a child benefit entitlement in 2013/14 of £3,146. Peter's income has previously been considerably more than £60,000, so in November 2012 he elected not to receive child benefit after 7 January 2013. The election remains in force.

As part of your tax return review process, you identify that Peter should revoke his election not to receive child benefit for 2013/14. Notification is given to HMRC on 18 February 2015.

Peter receives a payment of £3,146 on 26 May 2015.

As of May 2015, Peter is now liable to HICBC of 57.5% x £3,146 = £1,808.95 in respect of 2013/14, plus an additional payment on account in respect of 2014/15 of £904.48, a total of £2,713.43.

Amending Peter's 2014 self-assessment return on 29 May 2015, his tax adviser notes that his online account shows the liability of £2,713.43, plus a penalty for late payment of
the amount due for 2013/14 of £90.45 and interest of £22.30 to 31 May 2015.