High income benefit charge: common misconceptions

Personal tax



19 March 2024

The changes to the high income child benefit charge in Spring Budget 2024 only serve to emphasise some of the difficulties taxpayers can have with compliance.

Key Points

What is the issue?

From 6 April 2024, the tax charge is to be 1% of the child benefits received for every £200 that the adjusted income of the recipient or that of the higher ‘earner’ of a couple exceeds £60,000. The high income child benefit charge will therefore equal the child benefits received once the adjusted income exceeds £80,000.

What does it mean to me?

Most, if not all, tribunal cases referring to the high income child benefit charge are concerned with whether the taxpayer had a reasonable excuse for not declaring their liability.

What can I take away?

The high income child benefit charge remains a confusing tax charge, where HMRC's guidance does not always explain adequately how the charge applies, or the options around not receiving child benefit.

The many tribunal decisions on the high income child benefit charge, mostly concerned with 'reasonable excuse', reflect HMRC's inadequate and potentially misleading 'guidance', and the difficulties taxpayers can have with compliance. Perhaps the guidance will be reviewed and improved, following the changes proposed in the Budget on 6 March.

The high income child benefit charge was introduced by the Finance Act 2012 as a tax charge equal to 1% of the child benefits received for every £100 that the adjusted income of the recipient, or that of the higher 'earner' of a couple, exceeded £50,000. Thus if the adjusted income exceeded £60,000, the high income child benefits charge equalled the child benefits received.

There were many protests about the anomaly that a couple with income of £30,000 each would have no liability for the high income child benefit charge, whereas a couple where one partner had no income and the other partner had income of £60,000 would have the full liability.

The Chancellor said on 6 March: 'Today, I set out plans to end that unfairness. Doing so requires significant reform to the tax system, including allowing HMRC to collect household level information.'

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Many taxpayers have been caught out by this novel tax charge. Most, if not all, tribunal cases referring to the high income child benefit charge are concerned with

whether the taxpayer had a reasonable excuse for not declaring their liability.

Information deficits

Judge Nigel Popplewell has decided a number of these cases in favour of the taxpayer and he set out a summary of the circumstances in which a taxpayer is likely to have a reasonable excuse at paragraph 38 in *W Shahid v HMRC* [2023] UKFTT 716. In particular, the judge sets out that there are circumstances when ignorance of the law can be a reasonable excuse.

That summary did not refer to the effect of partners not sharing information about their finances. Nor did it mention the possible inadequacy of HMRC's advice.

Judge Popplewell at paragraph 26 of *W Shahid* says: 'If the partner exercises the right to decline to give this information [i.e. are you claiming child benefit and do you have an adjusted net income of over £50,000?], HMRC have a mechanism to allow them to obtain it. It seems that in these circumstances HMRC are prepared to waive the cloak of confidentiality about one spouse's tax position and provide details of it to the other spouse.'

The example of **Gillian and Herbert: lacking information** shows the difficulties that can emerge.

Tax Return notes SA150 do no more than recognise the possibility that a couple may separate, without discussing the difficulties. They simply give the following instruction:

'Put the total amount of child benefit payments you or your partner got for the 2022 to 2023 tax year.

'If you and your partner commenced or ceased living together during the tax year, their income was over £50,000 and greater than your income [*note: not 'adjusted net income'*], then enter the amount of child benefit you received whilst you lived alone. Your partner will need to enter the amount of child benefit received when you lived together on their tax return.'

Gillian and Herbert: lacking information

Consider the position for a tax year during which a couple, Gillian and Herbert, cease to live together. The two parted on 5 October 2022.

- Gillian’s adjusted income in 2022/23 is £45,000.
- Herbert’s income in 2022/23 is £65,000, of which £20,000 was in the first half of the tax year and £45,000 in the second.

Herbert is completing his return. He suspects that his wife receives child benefit but cannot require Gillian to say the amount she received while they were living together. He can’t know whose adjusted net income is the higher, as he is no longer in touch with Gillian.

How should he complete his return, as his adjusted net income exceeds £50,000? He must tell HMRC that he doesn’t have the necessary information to complete that section of his return.

Gillian knows she is in receipt of child benefit, and of course knows her own income. But she can’t know if Herbert’s adjusted net income is greater than hers. How should she complete her tax return? As her income doesn’t exceed £50,000, she can ignore that part of her return, but if her adjusted net income had exceeded £50,000, she would have to do the same as Herbert.

If neither has been required to complete a tax return, has adjusted income over £50,000, and knows or suspects that child benefits have been received by the other, they should have advised HMRC by 5 October 2023 that they might have a liability for high income child benefit charge but don’t have the necessary information to determine the amount.

The same issues arise in a year when two individuals marry, enter into a civil partnership or begin to live together as if married or as civil partners.
The proposal that HMRC might gather details of household income might not help in the situations described.

Common misunderstandings

A misunderstanding of the law remains with many, even after sight of the information provided by HMRC.

Judge Popplewell incorrectly states at paragraph 22 of *W Shahid* that the appellant's wife 'knew that if her husband's adjusted net income was more than £50,000, she should not be claiming'.

Judge Popplewell also partly misstates the position in *D Lakeland v HMRC* [2023] UKFTT 978, where he says: 'She had received no notification that she was not entitled to claim child benefit or that by doing so, she or her husband might become liable to the HICBC.' In fact, the claimant's entitlement remains, regardless of whether high income child benefit charge is due.

This misunderstanding may come from so many people referring to the high income child benefit charge as a withdrawal of child benefit. Even the Chancellor George Osborne said in his Budget Speech on 7 December 2012: 'The benefit will be withdrawn when someone in the household has an income of more than £50,000.' And Chancellor Jeremy Hunt said on 6 March: 'We currently withdraw child benefit when one parent earns [sic] over £50,000 a year.'

Actually, the Child Benefit claim form CH2 correctly says:

'If you or your partner have an individual income of:

- more than £60,000 a year a tax charge equal to the child benefit payment will apply, so you **may not want** to be paid child benefit; and
- between £50,000 and £60,000 a year a tax charge of less than the child benefit payment will apply, so you may **want** to be paid child benefit.'

The true position needs to be made clearer in HMRC's guidance at: tinyurl.com/zfd4hhyj.

Furthermore, HMRC's Guidance should include fuller definitions of 'partner' and 'adjusted net income'.

Definition of 'partner'

Income Tax (Earnings and Pensions) Act 2003 s 681G provides :

1. For the purposes of this Chapter a person is a 'partner' of another person at any time if either condition A or condition B is met at that time.

2. Condition A is that the persons are married to, or civil partners of, each other and are neither:

a) separated under a court order; nor

b) separated in circumstances in which the separation is likely to be permanent.

3. Condition B is that the persons are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

HMRC's guidance briefly states: '"Partner" means someone you're not permanently separated from who you're married to, in a civil partnership with or living with as if you were.'

Definition of 'adjusted income'

The definition of 'adjusted net income' in s 681H(2) refers to the Income Tax Act 2007 s 58. In brief, this provides that the individual's adjusted net income is net income, less the grossed-up equivalent of qualifying gift aid donations and the grossed-up equivalent of pension contributions paid net of tax, but adding back otherwise tax-deductible payments to trade unions and police organisations.

In the guidance on high income child benefit charge, HMRC only says: 'Your adjusted net income is total taxable income before any allowances and not including things like gift aid. Your total taxable income includes interest from savings and dividends.'

The choice of the phrase 'not including things like gift aid' is not at all clear. HMRC has now introduced a high income child benefit charge tax calculator (see tinyurl.com/sbxm4cft). This gives more explanations but still does not explain how to gross-up gift aid, or explain about the savings and dividend allowances. The Notes to the Child Benefit claim form CH2 say it's 'total taxable income, including any taxable benefits you get from your job minus certain tax reliefs such as payments made gross to pension schemes.' It is doubtful if the claimant would realise that the grossed-up amount of pension contributions paid net of tax is also deductible, as well as gift aid donations. And, of course, there is no mention of the need to add back any otherwise tax-deductible payments to trade unions and police organisations.

The Child Benefit claim form CH2 does at least indicate the wider meaning of partner in seeking details of the claimant's marital or civil partnership status, including 'living with a partner as if you are married or a civil partner'.

Among the many possible changes in circumstances which might occur following completion of a Child Benefit claim form, the Payment Advice Notes CH1715 tell claimants to advise changes in partners. One wonders how many child benefit claimants regularly consult a copy of the notes.

In conclusion

It is notable that the recent changes to top-slicing relief did not address the high income child benefit charge position. A change might be to revise the definition of 'adjusted net income' to exclude an appropriate portion of the income resulting from a 'chargeable event'.

The high income child benefit charge remains a confusing tax charge, where HMRC's guidance does not always explain adequately how the charge applies, or the options around not receiving child benefit. It is to be hoped that more attention will be paid to improving the guidance and taxpayer notifications.

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