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The High-Income Client Benefit Charge (HICBC) claws back child benefit by means of a tax charge where at least one partner has adjusted net income of £50,000 or more. Separating couples should check their claims so that they are not exposed to the HICBC unnecessarily.

Key dates

Taxpayers who are liable for the HICBC charge need to complete a Self-Assessment tax return online by midnight on 31 January after the end of the tax year to which the return relates (so by 31 January 2024 for the 2023/24 return).

This note explains the nature of the HICBC and the action that separating couples should take.

Nature of the HICBC

The HICBC is a tax charge that claws back child benefit paid in the tax year where either the claimant and/or their partner have adjusted net income of £50,000 a year or more. Where both partners have income in excess of £50,000, the charge is levied on the partner with the highest adjusted net income.

The charge works by clawing back 1% of child benefit paid for the tax year for every £100 by which adjusted net income exceeds £50,000. Once adjusted net income reaches £60,000, the charge is equal to the child benefit paid in the tax year. However, to avoid receiving the benefit only to pay it pay, a person can elect for the benefit not to be paid. It is important to register for the benefit though to preserve entitlement to the associated tax credits.

The charge may be levied on the claimant or his or her partner. A partner is a spouse or civil partner living with the claimant or an unmarried partner where the couple live together as a married couple. A partner, which includes a same sex partner, does not need to be a parent of the child in respect of whom the child benefit is claimed.

Impact of separation

A partner of a claimant is only liable for the HICBC where the couple live together as a married couple. Consequently, the liability ceases if the couple separate. Where a couple are married, they will be treated as separated where the separation is under a court order or in circumstances which are likely to be permanent. Unmarried couples will be treated as separated where the separation is likely to be permanent. The legislation does not define what these circumstances may be.

The date of separation may not always be clear, and the couple's interpretation of the separation date may differ from that of HMRC or the courts. The date of separation may be the date on which one partner moved. However, the couple may separate but may remain living in the same property, either for financial reasons or to co-parent their children. Where this is the case, the separation date may be the date that they agree their relationship has come to an end.

Where the charge is levied on the claimant's partner, they will be liable for the charge in the year of separation if their adjusted net income for that year is at least £50,000 – annual income is used to determine whether the charge applies, even if they only live with a partner who claimed the child benefit for part of the tax year. The charge for that tax year is equal to the child benefit received by the claimant up to and including the week of separation – child benefit paid post-separation is not clawed back.

Check which partner is the claimant

A recent decision by the First-tier Tax Tribunal (*Meades v HMRC* (TC08844)) highlights the need for separating couples to check which partner claimed the child benefit – this may not be the partner to whom the benefit is paid.

In the case in question, Mr Meades took responsibility for the paperwork and claimed child benefit following the birth of the couple's child in December 2012. The child benefit was always paid to the child's mother – Mr Meades now ex-wife.

The couple separated on 1 July 2017. Mr Meades moved out of the family home. There was no formal maintenance agreement, but he paid £500 a month to the child's mother and met household bills. The couple were divorced on 4 April 2019. Mr Meades remarried in November 2019. He lived with his new wife as partners throughout 2019/20.

HMRC issued an amendment to Mr Meades' 2019/20 tax return on the basis that he was liable to the HICBC for that year. This was despite the fact that he had not lived with the child's mother during that tax year.

The tribunal found that Mr Meades was the claimant as he was the person who had completed and signed the child benefit claim form. It did not matter that the child benefit was, and continued to be, paid to the child's mother. He remained entitled to claim child benefit as he provided financial support for the child. While the child's mother was also entitled to claim the benefit, she was unable to make a claim as child benefit in respect of the child had already been awarded to Mr Meades. As Mr Meades as the claimant in 2019/20 and had adjusted net income of more than £50,000, he was liable for the charge. An interesting aside here is that had his new partner's adjusted income been both more than £50,000 and higher than Mr Meades' adjusted net income, she would have been liable to the charge, even though she had no biological relationship to the child.

Action point on separation

Separation is a stressful time and who signed a child benefit claim form, possibly many years previously, is unlikely to be seen as a priority. However, a failure to check may result in unwanted (and arguably unfair) tax charges.

If the claim was made by the person who is not receiving the benefit, to prevent them being assessed for the HICBC after separation, they should end their claim. A new claim should be made by the partner who is to receive the benefit. As the name of the claimant cannot be changed retrospectively, it is important to bring the original claim to an end and to make a new claim.

If a person who is liable to the HICBC does not notify HMRC of this, they may be charged penalties as well as the charge. The fact that they did not realise that they were the claimant will not be accepted as a reasonable excuse.

We can help

Please call us on **01753 888211** or email **info@nhllp.com** if you need guidance with any of the issues raised in this Broadcast. We would be happy to help.