

*These notes refer to the Tax Credits Act 1999 (c.10)  
which received Royal Assent on 30 June 1999*

# TAX CREDITS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 4: Penalties: Procedure and Appeals*

This Schedule deals with procedures for penalties for non-compliance with obligations.

*Paragraph 1* provides for the determination of penalties by an officer of the Board except where proceedings have begun in the courts, under paragraph 5. It provides for the officer to make a determination imposing any penalty under section 9. The exceptions are initial penalties for failure to provide information, under section 9(4)(a), which have been imposed by section 9(3)(b) or (c). The latter penalties will be determined by the tax commissioners under paragraph 4. Under paragraph 1 the officer must serve a notice on the person liable, and may exceptionally increase the amount of the penalty if a discovery is made which shows that the amount of the penalty is insufficient. This reproduces the effect of s.100 of TMA for penalties relating to tax credits.

*Paragraph 2* provides for a penalty determined under paragraph 1 to be due from the estate of a person who has died; and for a penalty determined under paragraph 1 to be due 30 days from the issue of the notice of the determination. Paragraph 2 also provides for the collection and recovery provisions in TMA (Part VI) to apply to penalties under paragraph 1. Paragraph 2 reproduces the effect of s.100A of TMA.

*Paragraph 3* provides for appeals against penalty determinations, reproducing the effect of s.100B of TMA.

*Paragraph 3(2)* provides that appeals in relation to penalties imposed under the provisions of s.5(1)(h) and (hh) of the Social Security Administration Act 1992 or the corresponding Northern Ireland legislation, or relating to a fraudulent or negligent claim, shall be heard by the unified appeal tribunals set up by the Social Security Act 1998 or the corresponding Northern Ireland legislation.

*Paragraph 3(3)* provides that for other appeals the provisions of TMA shall apply as if they were appeals against an assessment to tax.

*Paragraph 3(4)* allows the Commissioners to set aside the determination, confirm it, reduce it, or increase it.

*Paragraph 3(5)* provides that an appeal from a decision of the Commissioners shall go to the High Court (or Court of Session in Scotland).

*Paragraph 4* provides for penalty proceedings before the Commissioners, reproducing the effect of s.100C of TMA.

*Paragraph 4(1)* provides for an officer of the Board to begin proceedings for an initial penalty under section 9(4)(a) which is imposed by section 9(3)(b) or (c). This is a penalty relating to employers' compliance.

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*Paragraph 4(2)* provides that the proceedings will be before the tax commissioners after information is put to them in writing.

*Paragraph 4(3)* provides that the collection and recovery provisions in TMA (Part VI) apply for the tax credits. These provisions deal with the collection mechanisms and court proceedings.

*Paragraph 4(4)* provides that appeal from determination of a penalty under this paragraph will be to the High Court (or Court of Session in Scotland).

*Paragraph 4(5)* provides that the court may set the determination aside, confirm it, reduce it, or increase it.

*Paragraph 5* allows the Board to take proceedings for a penalty in the High Court, where the liability arise from a fraud. This reproduces the effect of s.100D of TMA for the tax credits.

*Paragraph 6* allows the Board to mitigate penalties at their discretion. This reproduces the effect of s.102 of TMA for the tax credits.

*Paragraph 7* sets time limits for determining a penalty, and reproduces the effect of s.103 of TMA. Where the penalty is for fraudulently or negligently making an incorrect statement, the limit is either six years from the date the penalty was incurred; or three years after the final determination of the entitlement to the tax credit. For any other penalty the limit is six years after the penalty was incurred or began to be incurred.

*Paragraph 8* provides for interest to be charged on a penalty, from the date it becomes due and payable. It reproduces the effect of s.103A of TMA for the tax credits.