Working Tax Credit and Child Tax Credit

Decision-Making and Appeals

The rules for revising Working Tax Credit and Child Tax Credit decisions are very different to those for other social security benefits. In addition, although appeals against tax credit decisions are administered by the Appeals Service, there are some significant differences in the rules governing tax credit appeals.

The following is a summary of the rules relating to tax credit decision-making, revisions and appeals.

NB - The law concerning decision-making and appeals for Working Tax Credit and Child Tax Credit is to be found in sections 14 to 39 of the Tax Credits Act (TCA) 2002, and the Tax Credits (Appeals) (No.2) Regulations 2002, and the Tax Credit (Notice of Appeals) Regs 2002.

Initial decision and final decision

Claims for Child Tax Credit (CTC) and Working Tax Credit (WTC) must normally be made in writing on claim form TC600 to the Inland Revenue (IR), although a claim can be accepted in such other form as may be accepted as sufficient (and it is possible to claim online).

- Decisions on tax credits are made by the IR (section 14 TCA).
- On receipt of a claim the IR makes an initial/provisional decision on entitlement - based on the facts and information given in the claim (although they may request additional information).
- An award of tax credit will normally run until the end of the tax year.
- At the end of the tax year a “final notice” is issued to the claimant(s) asking for confirmation or correction of the facts on which tax credits have been paid for the year just ended.
- Claimant(s) are invited to respond to the “final notice” by a specified date – if s/he does not reply, the detail as set out in the final notice is adopted by the Inland Revenue as correct and a “final decision” issued.
- On the basis of the response, or adoption of the detail in the final notice a final decision will be made on entitlement and amount of tax credit for the year just ended.

Once a claim for CTC or WTC has been made, a decision will be made on entitlement and the amount of an award for the new tax year, on the basis of information provided or adopted for the final notice, so claimant(s) will not necessarily need to complete a new claim form each year.
A notice is sent to the claimant(s) asking for confirmation that income and household circumstances are as stated for the tax year just passed. If income and circumstances remain unchanged there is no need to respond to this notice.

**Revisions and Appeals**

Decisions on tax credits can be challenged and changed by either revision or appeal, but not also by supersession as is the case with DWP benefits and Housing and Council Tax Benefit. *(Tax Credits Act 2002 sections 14 – 21)*

- **Revision** - Inland Revenue change their decision on application by the claimant or IR own action
- **Appeal** - independent appeal tribunal changes the decision of the Inland Revenue

**Revision of initial/provisional decisions**

Initial decisions made on a claim for tax credits can be revised:

- during the tax year if a change in circumstances results in an change in entitlement
- during the tax year – if the IR have “reasonable grounds” for believing that the award is wrong, or there is no entitlement.
- at the end of the tax year, between issuing the final notice and the final decision
- up to 5 years from the end of the tax year if wrong because of official error by the IR (favourable to claimant) or neglect/fraud (unfavourable to claimant)

*[sections 15 and 16 Tax Credit Act]*

**Revision of Final decisions**

Final decisions may be revised up to five years from the end of the tax year to which the award relates.

A final decision is conclusive unless it is changed on appeal or due to the following:

- If the claimant(s) change their statement about income or circumstances before the deadline given in the notice, the final decision can be changed. If they reply to the final notice but then wish to change their statement, they can do so. *(section 18(5) Tax Credit Act)*

- **Revision on enquiry** – 1 year from final decision *(section 19 Tax Credit Act)*

  The Board may enquire into the entitlement or amount of tax credits for any year by giving a notice or request for information or evidence
  
  - within one year of the specified date in the final notice, or
  - within one year of the tax return for that year becoming final
Only one enquiry may be carried out in respect of CTC entitlement and one into WTC entitlement can be conducted for any one tax year.

- **Revision on discovery** - 1 further year / 5 years if fraud or neglect (section 20 Tax Credit Act)

Where a revision on enquiry is not possible (i.e. after one year), there may still be revision where the IR has reasonable grounds to believe a decision is wrong:

- in consequence of revised income tax liability. The revision of tax credit entitlement must take place within a year of any income tax liability being revised; or
- in circumstances attributable to fraud or neglect. However, tax credit in a tax year cannot be revised on this ground after 5 years from the end of that tax year.

- **Revision due to official error** - up to 5 years from final decision (section 21 Tax Credit Act)

A decision may be revised in the interests of the claimant(s) up to five years from the end of the relevant tax year if it was based on official error.

Official error means an error by the IR/DWP to which neither the claimant(s), nor anyone acting on their behalf contributed - but not an error of law arising from a test case.

**Appeals**

The rules relating to Tax Credit appeals are found in *sections 38 and 39 of the Tax Credit Act 2002* and the *Tax Credits (Appeals) (No.2) Regulations 2002*

NB - It is not necessary to seek a revision before an appeal.

- An appeal must be made in writing and be signed by or on behalf of the claimant(s)
- Give the grounds of appeal i.e. why the decision is wrong. A tribunal may allow new grounds to be raised later if they consider their earlier omission was not “wilful or unreasonable”

An appeal may be made against:

- Initial decisions
- Revision of an initial decisions
- Final decisions
- Decisions on discovery
- Revisions for official error
- Penalties for incorrect statements
• Penalties for failure to comply with requirements (and for failure by employers to make correct payments)
• Interest added to overpayments

**Appeal Time Limits**

Appeals must be made within 30 days of ‘the giving of’ the decision. This time limit can be extended by up to one year on top of the 30 days if either:

• A legally qualified panel member accepts that there are reasonable prospects the appeal will be successful; or
• It is in the interests of “natural justice” to admit the appeal for consideration – and one of the following applies:
  • Claimant/partner or dependent has died or is seriously ill, or
  • Claimant not in the UK, or
  • Normal postal services have been disrupted, or
  • Some other special circumstances exist which are wholly exceptional and relevant to the application

The longer the delay, the more compelling must be the special circumstances.

No regard will be had to ignorance or misunderstanding of the law or time limits, by the claimant or anyone acting for him/her

**Appeal Tribunals**

The appeal tribunal will normally consist of just 1 legally qualified panel member, but can be joined by the following if necessary:

• a medically qualified member and a member with a disability qualification, if the appeal concerns an issue relating to disability or incapacity so far as they are relevant to tax credit entitlement or maximum amount,
• a financially qualified panel member if the appeal concerns issues regarding accounts or balance sheets.

Tax Credit appeals are heard by the same independent tribunals that currently hear social security appeals, and the rules about tribunal procedures are also the same except for the following:

The tribunal cannot refer appellants for a medical examination

The tribunal can only consider grounds not raised in the written application for appeal if it was not “wilful or unreasonable” for them to have been missed out previously

If the IR is considering an appeal to the Commissioners or has decided to appeal, there would normally be no tax credit paid until after the Commissioner decides the case.
A tribunal’s decision cannot be superseded but it can be revised in the ways described earlier except for official error.

There is no provision obliging a legally qualified tribunal member to set aside the tribunal decision where both the claimants(s) and the IR agree the tribunal made an error of law.

**Appealing to a Commissioner**

It is possible to appeal to a Social Security Commissioner against a decision of a tribunal, but only if the tribunal has made an error of law.

The rules for appealing to a Commissioner are the same as for DWP benefits with the following two exceptions:

A Commissioner’s decision cannot be superseded but it can be revised in any of the previous ways described, except for revision due to official error.

A Commissioner’s decision can be set aside were documents were not sent or received, or a party to the proceedings was not present at the hearing, but there is no provision to set aside for other procedural irregularities.

As with DWP benefits, it is only possible to appeal against a Social Security Commissioner’s decision to either the Court of Appeal (in England or Wales) or the Court of Session (in Scotland) if the Commissioner has made an error of law.

Rightsnet Q&A July 2004