TAX CREDITS

LEGISLATION

INCLUDES

Tax Credits Act 2002
Tax Credit (Prescribed Period of Awards) Regulations 2002
The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002
The Child Tax Credit Regulations 2002
The Tax Credits (Definition and Calculation of Income) Regulations 2002
The Tax Credits (Claims and Notifications) Regulations 2002
The Tax Credits (Interest Rate) Regulations 2003
The Tax Credits (Appeals) Regulations 2002
The Tax Credits (Appeals) (No 2) Regulations 2002
The Tax Credits (Notice of Appeal) Regulations 2002
The Tax Credits (Administrative Arrangements) Regulations 2002
The Tax Credits (Payment By Board) Regulations 2002
The Tax Credits (Payment By Employer) Regulations 2002
The Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002
The Tax Credits (Approval of Home Childcare Providers) Scheme 2003
The Tax Credits (Immigration) Regulations 2003
The Tax Credits (Residence) Regulations 2003
The Tax Credits (Official Error) Regulations 2003
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003
The Social Security Commissioners (Procedure) (Tax Credit Appeals) Regulations 2002
The Tax Credits (Polygamous Marriages) Regulations 2003
Tax Credits (Provision of Information) (Evaluation and Statistical Studies) Regulations 2003
The Social Security Child Support and Tax Credits (Miscellaneous Amendments) Regulations (NI) 2005
The Tax Credits (Approval of Childcare Providers) Scheme 2005
The Tax Credit Up-Rating Regulations 2005
Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) (Amendment) Order 2005
Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations 2004
Tax Credits (Miscellaneous Amendments No. 2) Regulations 2004
Tax Credits Up-Rating Regulations 2004
Tax Credits (Miscellaneous Amendments No. 3) Regulations 2004

Tax Credits (Provision of Information) Evaluation and Statistical Studies (Northern Ireland) Regulations 2004
Tax Credits (Approval of Child Care Providers) Scheme 2005
Tax Credits (Provision of Information) functions relating to Employment and Training Regulations 2005
Tax Credits (Miscellaneous Amendments) 2009
The WTC Entitlement and Maximum Rate) Amendment regulations 2009
The Tax Credits, Child Benefit and Guardians Allowance Reviews and Appeals Order 2014
The Child Benefit (General) and Tax Credits (Miscellaneous Amendments) Regulations 2014
The Child Benefit (General) and the Tax Credits (Residence) (Amendment) Regulations 2014 (SI.No.2014/1511)
Tax Credit (Income Thresholds and Determination of Rates) (Amendment) Regulations 2016 (S.I No. 393/2016)

CONTENTS

GLOSSARY

AA – Attendance Allowance

CPAG – Child Poverty Action Group

CA – Carer's Allowance

CTC – Child Tax Credit

DfC – Department for Communities

DLA – Disability Living Allowance

ESA – Employment and Support Allowance

ESA(C) – Contribution-based Employment and Support Allowance

ESA(IR) – Income-related Employment and Support Allowance

HMRC – Her Majesty's Revenue and Customs

IT – Industrial Tribunal

JSA(IB) – Income-based Jobseeker's Allowance

PC – Pension Credit

WTC – Working Tax Credit

INTRODUCTION

The tax credits system includes two elements, Child Tax Credit (CTC) and Working Tax Credit (WTC).

CTC is a means-tested benefit payable to families with children under sixteen or under 20 and still in relevant education. CTC is payable to people regardless of whether in employment or not. It is also payable to students including student nurses.

WTC is a means-tested credit for lone parents or people with a disability who work sixteen hours or more per week. WTC is also available to couples with children, whose joint working hours are 24 hours a week or more (but one must be working at least sixteen hours) and to single people and childless couples aged over 25 and working more than 30 hours per week.

CTC and WTC replaced:

- Working Families' Tax Credit;
- Disabled Person's Tax Credit;
- personal allowances and premiums for children and young people on Income Support and Income-based Jobseeker's Allowance (JSA(IB)) including the disabled child premium and the enhanced disability premium for a child;
- the family premium for Income Support and JSA(IB);
- increases for child dependants for people on Carer's Allowance (CA), Retirement Pension and bereavement benefits.

From 5 April 2004, new Income Support and JSA(IB) claims do not include personal allowances and premiums for children. Her Majesty's Revenue & Customs (HMRC) intends to transfer all personal allowances and premiums for children included in claims for Income Support and JSA(IB) to CTC at some point in the future.

Transitional rules also allow claims which already included child dependant additions on 5 April 2003 to retain them. This transitional protection is lost if entitlement to the addition ceases or stops due to exceeding the earnings limit and this occurs for more than eight weeks.

Claims for tax credits are decided by HMRC. A tax credit award usually starts on the date of claim (the date it is received by HMRC) and runs to the end of the tax year. Claims for tax credits can be automatically backdated for up to 30 days providing all the conditions of entitlement are met throughout the backdated period.

If the date of claim is the beginning of the tax year, the award period is 365 days (366 if a leap year). Otherwise the award period is less than a year. However, HMRC can terminate an award immediately if a person ceases to be entitled. In addition, changes in circumstances mean that awards can be changed during the award period.

Tax credits are one of the benefits that will be replaced by Universal Credit (UC) when it is introduced in Northern Ireland. UC is intended to gradually replace tax credits beginning sometime during 2017. Existing claimants of tax credits will be able to stay on the benefit (as long as existing conditions are met) until they are moved onto (migrated) UC.

At the time of writing it is not known what effect the introduction of the Personal Independence Payment (PIP) Managed Reassessment process, due to begin in December 2016, will have on the tax credit renewal process. Anyone whose tax credit renewal is negatively impacted by PIP reassessment should contact Law Centre (NI) for advice.

1. WORKING TAX CREDIT

WTC is a means-tested tax credit paid to certain groups of people who are on a low income and in full time paid work. You do not have to have paid national insurance contributions to qualify for WTC. Entitlement to WTC is based on income and not capital, but actual income from capital counts as income.

1.1 Who can claim?

A person and, where appropriate, her/his partner must be aged sixteen or over to make a claim. There is no upper age limit.

Families, couples without children and single people who are at a disadvantage of getting a job or are aged 25 or over can all claim. A claim for tax credit must be made jointly by members of a couple, ie married or civil partners or living together as a couple.

1.2 Conditions of entitlement

To claim WTC, a person must be aged sixteen or over, living and/or working in the United Kingdom and not subject to immigration control, and

- s/he is in remunerative work of 30 hours a week or more and aged 25 or over; or
- s/he works at least sixteen hours a week and has a disability which puts her/him at a disadvantage for getting a job; or
- s/he works at least sixteen hours a week and is over 60; or
- s/he works at least sixteen hours a week and is a lone parent; or
- s/he and/or partner has a child or qualifying young person whom s/he and/or partner is responsible for; and

- the couple's joint working hours in remunerative work are 24 hours or more a week; and
- s/he or partner works at least sixteen hours a week.

1.2.1 Remunerative work

A person must be working the required number of hours or more per week and be expected to continue to do so for at least four weeks after claiming. A person can be employed or self-employed and can have more than one job. In calculating hours worked, any customary or paid holidays are ignored as well as meals and tea breaks unless these are paid breaks.

Hours can only be counted towards a week's hours worked if the person does them in expectation of payment. For self-employed people, 'hours worked' does not just cover work that can be linked to a particular client but can also include any time spent doing the following:

- buying tools/stock;
- keeping books/records;
- research in certain circumstances, for example, if the self-employed person is an author;
- advertising or canvassing customers/clients;
- visiting clients;
- time spent cleaning premises/equipment, for example taxi drivers cleaning their car.

Work carried out by prisoners is not qualifying remunerative work. However, a prisoner's income from work will be included in any claim by her/his partner for tax credits.

The work must be paid or done in expectation of payment. The expectation of payment should be a probability, not just a possibility. Work done for a charitable or voluntary organisation or as a volunteer where payment is made for expenses is not considered to be remunerative work. Nor is an activity done as a hobby.

The requirement to work the required number of hours is ongoing. A person should keep a careful record of hours worked. S/he is also required to notify HMRC of changes in her/his working hours.

Work done in the setting up of a business is not generally classed as work done in expectation of payment. This is because payment can only be reasonably expected when the business itself is actually up and running.

A person on sick leave or ordinary maternity leave, paternity leave or adoption leave from a job or self employment where s/he worked at least sixteen hours a week before going on leave will be considered to be in remunerative work.

A person is also treated as being engaged in remunerative work during the first thirteen weeks of an additional maternity or adoption leave period provided s/he worked at least sixteen hours a week before the initial period of ordinary maternity or adoption leave began.

A person must also be working at the date of claim or have an offer of work which is due to start within seven days of the claim. Modified rules apply to term time and seasonal workers not working at the date of claim.

From 6 April 2015, "self employed" means carrying on a trade, profession or vocation on a commercial basis with a view to the realisation of profits either on one's own account or as a member of a business partnership and the trade, profession or vocation is organized and regular.

It is essential that the main aim of self-employment is to earn a profit. A person's individual circumstances will be taken into consideration by HMRC when making this assessment. For example, it will be relevant if the person has children and child caring responsibilities. HMRC will focus on all the normal factors associated with carrying on a genuine trade when deciding if a person is in fact self-employed.

The expectation to receive a profit does not cover any specific period or time frame. It is sufficient if the person believes that a profit will realistically be earned at some point in the future, no matter how far.

1.2.2 Disability and disadvantage in getting a job

A person claiming is treated as having a disability which puts her/him at a disadvantage in getting a job if:

- s/he is working at least sixteen hours per week;
- has one of the disabilities listed in the schedule to the regulations (see A7 Appendix 1: Tax Credits Schedule 1); and
- one of the following conditions applies:
  - currently receives one of the following benefits:
    - Disability Living Allowance (DLA);
    - Personal Independence Payment (PIP);
    - Attendance Allowance;
    - War Disablement Pension or Industrial Injuries Disablement Benefit which includes Constant Attendance Allowance or a Mobility Supplement;
    - an invalid carriage or other vehicle provided under the Invalid Vehicle Scheme; or
  - has been receiving one of the following benefits for at least one day in the 26 weeks before the date of claim:
    - ESA where entitlement to that allowance or Statutory Sick Pay has existed

for a period of 28 weeks;

    - Income Support, JSA(IB) or Housing Benefit and the applicable amount includes a disability or higher pensioner premium; or

  - within eight weeks before the date of claim has undertaken training for work for at least one day (training scheme) and in the eight weeks prior to starting the scheme was receiving:

    - Contribution-based ESA (ESA(C)) where entitlement to that allowance or Statutory Sick Pay has existed for a period of 28 weeks; or

  - has been incapable of work; and

    - has for 20 weeks received statutory or occupational sick pay, ESA, Income Support or national insurance credits on the grounds of incapacity for work or limited capability for work (ESA). The last day of the 20 week period must fall within eight weeks of the date of claim. The 20 week period need not be a single continuous period. It can be made up of two or more periods separated by eight weeks or less (52/104 weeks for certain groups); and

    - currently has a disability which is likely to last for at least six months (or the rest of the person's life if death is expected within that period); and

    - weekly gross earnings are less than they were before the disability began by at least the greater of 20 per cent and £15 a week.

1.2.3 Child or qualifying young person

A child is a person under sixteen. A person who has turned sixteen is treated as a child up until 31 August after her/his sixteenth birthday.

A qualifying young person is:

- a person sixteen or over and under twenty and in full time non-advanced education or under eighteen who is registered for work or training with the Department for Employment and Learning (DEL).

  This training or education must have started before the person turned nineteen, or the person must have been accepted or enrolled on the course prior to reaching nineteen;

- a person under eighteen who has ceased full time non-advanced education or registered training with DEL and it is not more than twenty weeks since finishing the educational course or training.

A person will be deemed responsible for a child/qualifying young person where the child or young person normally lives with her/him. Where a child/qualifying young person normally lives with two or more persons in different households and two or more claims are made, only one person will be deemed as responsible – the one who has 'main responsibility' for the child/qualifying young person. Where there is disagreement as to who is responsible, HMRC will make a determination.

A person claiming is required to notify HMRC when a child or young person is no longer included in a claim, otherwise an overpayment may arise.

1.3 Elements of WTC

WTC has eight elements.

Element of WTC	Annual rate	Daily rate
Adult element	£1,960	£5.37
Second adult element	£2,010	£5.51
Lone parent element	£2,010	£5.51
Disabled worker element	£2,970	£8.14
30 hour element	£810	£2.22
Severe disability element	£1,275	£3.50

Child-care element	Weekly rate	Daily rate
70% of weekly charges up to maximum one child	£175.00	£25.00
max 2 children or more	£300.00	£42.86

Note: The daily rate of the childcare element is calculated by dividing the weekly rate by 7 and rounding up to the nearest penny. The daily rate of all other elements is calculated by dividing the annual rate by 365 (366 for a leap year) and rounding up to the nearest penny.

The elements (other than the childcare element) are calculated on a pro rata basis. This involves taking the annual rate for the relevant element, dividing it by the number of days in the tax year, rounding up to the nearest penny and multiplying it by the number of days in the relevant period. The relevant period is the number of days during the period of an award where:

- a person's entitlement to the elements of tax credits (other than the childcare element) remains the same;

and, where the award includes WTC,

- childcare used remains the same; and
- a person's average weekly childcare charge does not change by £10 or more or reduce to nil.

Therefore an award period can be made up of one or more relevant periods.

For example, a lone parent working 20 hours a week with one child aged fifteen claims on 31 December 2016 (ie 96 days before the end of the tax year). Her circumstances are unlikely to change. Her award period is made up of one relevant period of 96 days and she will be entitled to the following elements:

WTC

Adult element	£515.52
(£5.37 X 96)	
Lone parent element	£528.96
(£5.51 X 96)	

CTC

Child element	£731.52
(£7.62 X 96)	
Family element	£144.00
(£1.50 X 96)	

1.3.1 Adult element

Amount paid £1,960 (£5.37 per day)

There is one element payable per claim.

1.3.2 Second adult element

Amount paid £2,010 (£5.51 per day)

A second adult element is payable in joint claims. This will not be paid where:

- one member of a couple is serving a custodial sentence of more than twelve months and neither partner has responsibility for a child or young person; or
- one member of a couple is a ‘person subject to immigration control’ and neither partner has responsibility for a child or young person.

1.3.3 Lone parent element

Amount paid £2,010 (£5.51 per day)

A lone parent element is payable where the person claiming is single and responsible for a child or qualifying young person.

1.3.4 30 hour element

Amount paid £810 (£2.22 per day)

A 30 hour element (maximum1x30 hour element per claim) is payable where:

- the person claiming is single and working at least 30 hours a week; or
- in a joint claim, at least one of the couple is working at least 30 hours a week; or
- in a joint claim, the partners are working a total of at least 30 hours between them, and:
  - at least one partner is responsible for a child or young person; and
  - one is working at least sixteen hours a week.

1.3.5 Disabled worker element

Amount paid £2,970 (£8.14 per day)

A disabled worker element is payable where:

- the person claiming is working at least sixteen hours per week;
- s/he is treated as having a disability which puts her/him at a disadvantage in getting a job; and
- the conditions outlined in 1.2.2 are satisfied.

Where both members of a couple each satisfy this condition, two elements will be paid.

1.3.6 Severe disability element

Amount paid £1,275 (£3.50 per day)

A severe disability element is payable if the person claiming or, in the case of a joint claim, one of the people claiming receives:

- DLA highest rate care component; or
- PIP enhanced rate of the daily living component; or
- armed forces independence payment; or
- Attendance Allowance high rate; or
- would receive these benefits but for being in hospital.

Where both members of a joint claim couple each satisfy any of these conditions, two elements are payable.

1.3.7 Childcare element

A childcare element is payable at the rate of 70 per cent of eligible childcare costs up to a maximum figure (see 3.3 for full details of how the childcare element is calculated).

2. CHILD TAX CREDIT

Child Tax Credit (CTC) is a means-tested tax credit paid to people who have responsibility for a child or qualifying young person.

As outlined in the introduction, CTC will be gradually replaced by Universal Credit (UC) at some point next year and existing claimants will be migrated onto UC.

2.1 Who can claim?

To claim CTC, the person or couple claiming must be:

- sixteen or over. If under sixteen, her/his parent(s) or an adult who is responsible for her/him may be able to claim CTC for her/him and the child. There is no upper age limit for claiming CTC; and
- on an income sufficiently low; and
- responsible for a child or young person; and
  - present, and ordinarily resident and have a legal right to reside in the United Kingdom.

    Workers living in the Republic of Ireland and working in Northern Ireland will normally be treated as satisfying this test. Migrant workers from the European Union should normally satisfy the test including:
    - nationals of Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK;
    - from 1 May 2011, workers from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, formerly known as A8 nationals;
    - from 1 January 2014, Bulgarian and Romanian nationals.
  - **Note:** From 1 July 2014, EEA national jobseekers who come to the UK for the first time will be unable to claim CTC until they are living in the United Kingdom (does not take into account time spent in the Common Travel Area) for three months. This rule does not apply to EEA workers or those who have a different right to reside.

- **Note 2:** On 1 July 2013, Croatia joined the EU as an accession state. Nationals of Croatia currently have to comply with a Workers Authorisation Scheme which is very similar to that which applied to Bulgarian and Romanian nationals. Most Croatian nationals will need permission to work in the UK and will only have full EU rights after twelve months of authorized work. These restrictions will continue to apply to Croatian nationals until at least 30 June 2018.
- **Note 3:** On 23 June 2016, a referendum on membership of the European Union was held and on 24 June it was announced that a majority of citizens had voted to leave the EU. It is not yet known how this will affect the rights of EU/EEA citizens already residing in the UK or how it will affect those coming to the UK after it has formally withdrawn from the EU. The process of withdrawing from the EU will take around two years from when the formal process is commenced.

- not subject to immigration control.

If in any doubt as to a person's residence status, it is very important to contact Law Centre (NI) immediately. Giving a person subject to immigration control the wrong advice on eligibility for tax credits can have catastrophic consequences. It can lead to loss of immigration status and deportation.

2.1.1 Responsible for a child

A person will be entitled to CTC where s/he is responsible for at least one child or a qualifying young person whether working or not.

A child is a person under sixteen. A person who has turned sixteen is treated as a child until 31 August after her/his sixteenth birthday.

A qualifying young person is:

- a person aged between sixteen and 20 who is in full time education (but not advanced education eg a degree) or who is registered for work or training with DEL. This training or education must have started before the person turned nineteen, or the person must have been accepted or enrolled on the course prior to reaching nineteen; or
- a person aged under eighteen who has ceased full time education or registered training with DEL and it is not more than 20 weeks since s/he did so.

To be in full time education, a young person must be studying more than twelve hours a week.

A person is not treated as responsible for a child or a qualifying young person who claims and is awarded Income Support, CTC, JSA(IB)or ESA in her/his own right.

A person will be deemed responsible for a child/qualifying young person where the child or young person normally lives with her/him. Where a child/qualifying young person normally lives with two or more persons in different households and two or more claims are made, only one person will be deemed as responsible – the one who has 'main responsibility' for the child/qualifying young person. Where there is disagreement as to who is responsible, HMRC will make a determination which can be challenged by a mandatory reconsideration and then appealed.

A person claiming is required to notify HMRC when a child or young person is no longer included in a claim.

2.2 Elements of CTC

CTC has five elements:

Elements of CTC	Annual Rate	Daily Rate
Family element	£545	£1.50
Child element (per child)	£2,780	£7.62
Disabled child addition	£3,140	£8.61
Severely disabled child addition	£1,275	£3.50

The amounts above are per year and per day.

The elements are calculated on a pro-rata basis by taking the annual rate for the relevant element, dividing it by the number of days in the tax year (366 in a leap year) and multiplying it by the number of days in the relevant period.

The relevant period is worked out as outlined in 1.3.

2.2.1 Family element

Amount paid £545 (£1.50 per day)

The family element is payable to all families who have responsibility for a child or young person and have an income of less than £26,000 or £32,200 if there are two children or young people within the family. These amounts may differ depending on individual situations, eg if a child has a disability.

Only one family element is payable and the amount is the same for a single or joint claim.

Note: It is expected that a person will no longer be able to claim the family element on new claims made after 6 April 2017. This will mean an annual loss of £545 to new claimants after this date. There are expected to be limited exceptions, with those claimants receiving it before this date being protected.

2.2.2 Child element

Amount paid £2,780 (£7.20 per day)

One child element is payable for each child or qualifying young person in the family.

Note: From 6 April 2017, the government intends to restrict eligibility for CTC to two children only (with some limited exceptions). New claims to CTC after this date will only get paid for the first two children. Third and subsequent born children after this date will similarly be restricted.

It is expected that extra amounts for disabled and severely disabled children will remain.

2.2.3 Disabled child element

Amount paid £3,140 (£8.61 per day)

A disabled child element is payable for each child in the family who:

- is in receipt of DLA; or
- young person in receipt of Personal Independence Payment (PIP); or
- is certified as severely sight impaired or blind by a consultant ophthalmologist ; or
- ceased to be certified as severely sight impaired or blind by a consultant ophthalmologist in the last 28 weeks.

This is paid on top of the child element. 2.2.4 Severely disabled child element

Amount paid £1,275 (£3.50 per day)

The severely disabled child element will be paid where there is a child entitled to DLA highest rate care component. It will also be paid for each young person who receives PIP at the enhanced daily living element. It is paid on top of the child element and the disabled child element.

3.CALCULATING TAX CREDITS

Step 1: work out the relevant period;

Step 2: calculate maximum tax credits;

Step 3: calculate childcare element;

Step 4: calculate income;

Step 5: calculate the threshold amount;

Step 6: compare income with threshold amount;

Step 7: apply reductions;

Step 8: calculate entitlement to tax credits.

Each of the stages must be calculated on a pro rata basis. This is done, for example, by taking the annual rate of the relevant tax credit elements (other than the childcare element), dividing by the number of days in the tax year and multiplying by the number of days in the relevant period.

Pro-rata calculations apply to tax credit elements, income and threshold figures for both WTC and CTC.

3.1 Step 1: work out the relevant period

The number of days in a relevant period is needed to work out the maximum amount of tax credits. To work out a relevant period calculate the number of days during the period of an award where a person's:

- entitlement to the elements of tax credits (other than the child-care element) remains the same;

and, where the award includes WTC,

- childcare used remains the same; and
- her/his average weekly childcare charge does not change by £10 or more or reduce to nil.

3.2 Step 2: calculate maximum tax credits

Calculate the maximum tax credits for the relevant period. This is done by adding together:

- the relevant CTC elements (maximum CTC) excluding the family element; and
- the relevant elements of WTC (maximum WTC) excluding the childcare element.

If the claim is for less than a year, calculate the maximum amount for the relevant period pro rata.

3.3 Step 3: calculate the childcare element

The childcare element of WTC is payable at the rate of 70 per cent of eligible childcare costs up to a maximum figure. Where costs are paid for only one child, the maximum amount is £175 a week. Where they are paid for two or more children, the maximum amount is £300 per week. These figures represent the maximum amount of eligible childcare costs to which the taper is applied to calculate the childcare element.

Eligible children in eligible paid childcare	Maximum eligible childcare costs (A)	Maximum weekly childcare element (ie 70% of (A))
One	£175 per week	£122.50 per week
Two or more	£300 per week	£210 per week

To calculate maximum amounts for a relevant period, divide the weekly maximum by seven, round up to the nearest penny and then multiply by the number of days in the relevant period.

3.3.1 Qualifying conditions

In order to qualify for a childcare element, a person must be responsible for at least one child. In addition, s/he must be:

- a lone parent in remunerative work of sixteen hours or more per week; or
- a member of a couple where both partners are in remunerative work of sixteen hours or more per week; or
- a member of a couple where one is in remunerative work of sixteen hours or more per week and the other is incapacitated (see 3.3.2), or is in hospital or prison;
- a member of a couple where one is in remunerative work of sixteen hours and the other is entitled to Carer's Allowance (including underlying entitlement).

In addition, the child or children cared for must be:

- of qualifying age (see 3.3.3); and
- in eligible childcare (see 3.3.4).

3.3.2 Meaning of incapacitated

A member of a couple is treated as incapacitated if:

- Housing Benefit is payable and the applicable amount includes a disability premium in respect of incapacity or a support component or work-related activity component, or s/he counts as incapacitated under the Housing Benefit childcare costs rules, eg:
    - Housing Benefit includes a support component or work-related activity component; or
    - the person has been treated as continuously incapable of work for 196 days or more (disregard any break of up to 56 days); or
    - the person has been treated as continuously having limited capability for work for 196 days or more (disregard any break of up to 84 days); or
- s/he receives of at least one of the following benefits:
    - DLA;
    - PIP;
    - Attendance Allowance;
    - Contribution-based ESA for at least 28 weeks;
    - ESA after being transferred from Incapacity Benefit or SDA;

  - SDA;
  - Constant Attendance Allowance or an equivalent under the War Pensions or Industrial Injuries scheme;
- s/he is a hospital in-patient and was getting Attendance Allowance, PIP, DLA or an increase in industrial injuries disablement pension before going into hospital; or
- s/he receives ESA(C) where entitlement to that allowance or Statutory Sick Pay has existed for a period of 28 weeks; or
- s/he has an invalid carriage or similar vehicle provided under the invalid vehicle scheme.

3.3.3 Qualifying age

Qualifying age is from birth to the last day of the week in which 1 September falls following the child's fifteenth birthday, or following her/his sixteenth birthday if s/he is a disabled child. A disabled child is defined as a child in receipt of DLA or registered blind or who has been taken off the blind register within the previous 28 weeks.

3.3.4 Eligible childcare

Eligible childcare includes the following:

- a registered child minder;
- other registered childcare providers, such as nurseries, after school clubs and local councils providing day care services;
- schools or establishments exempt from registration;
- an out of hours club for children on school premises run by the school or local health care trust or education and library board;
- a childcare scheme run by an approved supplier for children aged seven or over (organisations such as breakfast clubs, after school clubs and holiday play schemes can be approved by an accredited organisation);
- a foster parent or foster carer who provides childcare for someone other than her/his foster child;
- childcare provided in a child's own home by a person approved by a health care trust under the Home Care Provider's Scheme. Childcare provided by a parent or relative in the home of the child or relative is excluded. Relative means grandparent, aunt, uncle, brother, sister (whether related by blood, marriage, civil partnership or affinity) or a step-parent.

The Homecare Providers Scheme which came into force on 6 April 2006 expands the category of eligible childcare to include non-registered child minders in the child's home who are approved by a health and social services trust. Under this scheme, the child minder must make an application for approval to a health care trust. In order to be approved, the applicant must:

- be aged eighteen or over; and
- have obtained a relevant childcare qualification or attended an approved induction course in childcare; and
- have a relevant certificate in first aid; and
- not be considered unsuitable to work with children.

3.3.5 Calculating childcare costs

The method for calculating childcare costs depends on whether charges are paid weekly or monthly.

- **Weekly**

For charges paid weekly, the relevant charge is the average weekly amount paid in the four most recent complete weeks. Round this figure up to the nearest pound.

Where the weekly charge varies, the relevant charge is 1/52 of the total of charges over the previous 52 weeks (rounded up to the nearest pound).

- **Monthly**

Where the charge is for a fixed monthly amount, the relevant charge is that amount multiplied by twelve and divided by 52 (rounded up to the nearest pound).

Where the monthly charge varies, the relevant charge is 1/52 of the total of charges over the previous twelve months (rounded up to the nearest pound).

- **Relevant period**

The actual childcare costs for the relevant period are calculated by multiplying the relevant weekly charge by 52, dividing by 365 (366 for a leap year) and multiplying by the number of days in the relevant period. To work out the childcare element, calculate 70 per cent of this figure or of the maximum eligible childcare cost for the relevant period, whichever is the lowest. Round the amount up to the nearest penny.

- **Example**

A lone parent has started full time work (40 hours per week) and makes a claim for tax credits on 31 December 2016. Her current year income is £10,430, an increase of £3,000 from last year. She has two children, aged six and five, and pays a registered child minder £150 to look after her children. Her circumstances are unlikely to change in the current year.

Number of days in relevant period	96
Relevant weekly charge	£150

Actual childcare costs	£150 x 52 = £7,800/365 x 96 = £2,051.51
Maximum childcare costs	£300 ÷ 7 = £42.86 X 96 = £4,114.29
Childcare element	70% of £2,051.51 = £1,436.06 (i.e. 70% of lowest figure)

- **Estimates**

Where there is insufficient information available in order to calculate childcare costs in any of these ways, an HMRC officer will estimate the charge. It will be calculated by any reasonable method, taking into account any information already provided.

Relevant childcare charges can be calculated where an agreement for childcare has been made but charges for that care have not yet been incurred. The calculation of relevant future charges is based on an estimate provided by the child minder or childcare provider.

The previous system for claiming for childcare charges over a short period of time has been simplified. For example, a parent incurring childcare charges during summer holidays will only receive the childcare element for that period. Previously, childcare charges would have been averaged out over the whole year. This no longer occurs and there will not be a 'four week run on' after an award of child care charges for a fixed period.

- **Changes of circumstances**

The childcare element will be recalculated where HMRC is notified of:

  - childcare cost increases or decreases of £10 a week or more for at least four consecutive weeks;
  - childcare costs ceasing;
  - a change in childcare provider to one that is not eligible.

Where weekly childcare costs cease or decrease by at least £10 for at least four consecutive weeks, the person claiming WTC is required to notify HMRC within one month of her/him becoming aware of the change.

3.4 Step 4: calculate income

To calculate tax credits, an assessment is made of a person (and any partner's) income. The calculation is the same for both WTC and CTC.

The income test does not apply to a person who is entitled to Income Support, JSA (IB), ESA(IR) or PC. In these circumstances, the person will receive her/his maximum tax credits for as long as s/he is entitled to the relevant benefits.

3.4.1 Relevant period

For tax credit purposes, income is calculated for the relevant period.

The income is calculated on a pro-rata basis by taking the income relating to the relevant tax year, dividing it by the number of days in the tax year (normally 365 but 366 in a leap year), and multiplying it by the number of days in the relevant period. Round this figure down to the nearest penny.

3.4.2 Relevant income

A person's entitlement to tax credits depends on her/his relevant income. In the case of joint claims, the aggregate income of the couple is calculated.

The person will have to provide evidence of her/his income to make a claim. Records of all income and any childcare costs will need to be maintained. Evidence such as a P60 will be relevant when making a claim.

The claim form only asks for the previous tax year's income. This income will normally be used to calculate the award (although see section 3.4.4).

3.4.3 Using previous year's income

In most instances, the income from the previous year will be used to calculate an award. The previous year's income refers to the income earned in the last tax year (ie a claim made in September 2016 will normally be based on income for the period 6 April 2016 to 5 April 2016).

The previous year's income will be used to calculate an award even where a person volunteers current year income details at the date of claim.

The assessment will be made on the previous year's income and then, where appropriate (see 3.4.4) revised using current year income, providing HMRC has been informed of the changes in income.

3.4.4 Using current year's income

Where there has been any decrease or increase above a certain limit on the previous year's income, the current year's income will be used to calculate the award.

The current year's income refers to the current tax year. For example, a claim made in September 2016 may be based on the projected income for the current year, ie the period 6 April 2016 to 5 April 2017.

The current year's income may be used where:

- the previous year's income would result in a nil entitlement to tax credits. For example, a couple makes a claim for tax credits in September 2016. In the previous tax year (2015-2016), both were working and their aggregate income for this period led to a nil award. When they claim in September 2016, only one of them is working and the income is sufficiently low to merit an award. The projected income for the current tax year will be used; or

- the current year's income exceeds the previous year's income by more than £2,500. The current year's income minus £2,500 will be used. For example, a person makes a claim in October 2016. In the previous tax year (2015-2016), her/his income was £16,500. On making the claim in October 2016, her/his income has increased to £42,000. The income used in calculating the award will be £39, 500 i.e. £42,000 minus £2,500. The limit of £2,500 applies to awards from the year 2016/2017 onwards (for awards before 2016/2017 the limit is £5,000); or
- the current year's income has decreased by more than £2,500 from the previous year's income. The current year's income will be used plus £2,500. For example, a person makes a claim in November 2016. In the previous tax year (2015-2016), her/his income was £21,250. On making the claim in November 2016, her/his income has decreased to £17,500. The income used in calculating the award will be £17,500 plus £2,500 equals £20,000.

Please note: if the current year's income has decreased by less than £2,500 from the previous year's income, the previous year's income will be used. For example, a person makes a claim in November 2016. In the previous tax year (2015-2016) her/his income was £21,250. On making the claim in November 2016, her/his income has decreased to £20,500. The income used in calculating the award will be £21,250.

As previously stated, the claim form only asks for the previous tax year's income. However, it is important to notify any increase or decrease in income in the current year as failure to do so could result in overpayment or underpayment of tax credits.

3.4.5 How is income calculated?

As a general rule, income is taken into account if it is taxable (there are exceptions) and taxable income includes:

- earnings;
- taxable profits from self-employment;
- taxable social security benefits;
- income from certain pensions;
- income from capital;
- income from property;
- foreign income;
- notional income;
- miscellaneous income.

Income for tax credits can be calculated in four stages.

3.4.5.1 Stage one

Calculate and add together:

- pension income;
- investment income;
- property income;
- foreign income;
- notional income;

and apply disregard.

☐ Pension income

This includes all state pensions, occupational pensions, personal and private pensions, Widow's Pension, Widowed Mother's and Widowed Parent's Allowance, Industrial Death Benefit and Survivor's Guaranteed income payment and child's payment under the Armed Forces Compensation Scheme.

It does not include any:

- pension or part of a pension paid to a member of the forces as a result of a wound or disability;
- pension or annuity paid because the person is a holder of the Victoria Cross or George Cross and other awards (for full list see Section 638 Income Tax (Earnings and Pensions) Act 2003 (ITEPA);
- war widow/ers or war disablement pension;
- mobility supplement or attendance allowance paid as part of a war pension;
- naval, military or air force disablement or death pension;
- pension paid as the result of an industrial injury which exceeds the normal retirement pension payable on grounds of ill health;
- increase for a non-family dependant paid with a pension under the Services Pension Order.

☐ Investment income

Investment income includes taxable interest on investments, including government stocks and bonds, discounts on securities, income from securities payable out of public revenues in the UK, share dividends, payments from the estate of a deceased person, payments from a trust, taxable payments from a life assurance policy, life annuity contract or capital redemption policy, and interest arising from a debt owed to the person.

There are no capital limits for CTC and WTC. Instead, the actual income received from capital (before tax is deducted) is taken into account.

It does not include:

- interest or dividends from a Personal Equity Plan (PEP) or Individual Savings Account or Tessa which attract tax relief. If a person has cash (rather than shares) held in a PEP, up to £180 interest can be withdrawn and disregarded;
- any winnings from betting, lotteries or games with prizes;
- interest on a payment of £10,000 paid to a person (or partner) who was held prisoner by the Japanese during the second world war if it is held in a distinct account and no payment other than interest has been added to the account;
- interest paid on compensation for victims of National Socialist persecution where held in a distinct account and no payment other than interest has been added to the account;
- annuity payments on compensation payments under the Criminal Injuries Compensation Scheme;
- interest eligible for tax relief on a payment under a life annuity;
- interest on compensation paid to a person under eighteen in respect of the death of one or both parents;
- investment income from tax exempt annual payments, for example a covenant;
- trust payments for a person who suffers from Creutzfeldt-Jakob disease or haemophilia. These are disregarded for the lifetime of the recipient or her/his partner for two years if paid to the disabled person's parent (or someone acting in place of the parent). If inheriting money from an estate of a disabled person, the money is ignored up to the value of the original trust: if a partner, for her/his lifetime; or, if a parent of the disabled person, for two years;
- interest or interest payments which are disregarded for income tax purposes on damages for personal injuries including periodical payments from such damages;
- income from savings certificate and tax certificates and tax reserve certificates;
- £70 interest per tax year on deposits with national savings and investments;
- interest on the first £30,000 of a loan taken out before 9 March 1999 under a Home Income Plan to buy a life annuity;
- certain compensation payments relating to an unclaimed bank or building society account of a holocaust victim;
- interest from a certified save as you earn scheme;
- capital element of a purchase life annuity;
- tax free health and employment insurance or immediate needs annuity payment.

☐ Property income

Property income includes any taxable profits derived from rent or other receipts in respect of land or property.

☐ Foreign income

Foreign income is any income arising from possessions (including property), pension or investments coming from outside the UK. This covers most overseas income. It does not include:

- employment income (eg earnings);
- trading income;
- a banking charge or commission for converting currency into pounds sterling;
- any annuity or pension paid to victims of National Socialist persecution or any interest on an unclaimed bank account;
- lump sum payments by overseas pension schemes which attract tax exemption;
- ten per cent of a foreign pension;
- foreign social security payments which attract tax exemption, for example, any equivalent to short term Incapacity Benefit plus any child dependant addition, any equivalent of Invalidity Benefit providing it was payable prior to 13 April 1995 and it continues in payment and any equivalent of Child Benefit;
- interest on awards for personal injuries made by a court outside the UK;
- educational allowances paid by overseas authorities to public officials of overseas territories;
- property losses in one tax year that can be offset against property income in the following year;
- income that cannot be transferred to the UK by law or is not permitted by the government of the country where the income arises or where foreign currency is not available in the country.

☐ Notional income

A person will be treated as possessing income which s/he has deprived her/himself of for the purposes of securing or increasing entitlement to tax credits. A person can also be treated as having income available to her/him at the date of application, even if s/he does not in fact have it. This could include insurance policies and investments that can be turned into cash.

This does not apply to income from:

- a trust set up as a consequence of a personal injury;
- a personal pension scheme or retirement annuity contract;

- personal injuries compensation administered by the court;
- rehabilitation allowance (under Section 2 of the Employment Act);
- category A or B retirement pension, graduated pension or deferred shared additional pension.

Notional income can also include assumed income where a person provides a service for which s/he does not receive payment, or the payment is insufficient for the services provided. The income assumed will be a comparable amount for the service provided.

This does not apply where a person is:

- engaged in charitable or voluntary work where it is reasonable to provide the service free of charge; or
- on an employment or training programme and no payment is made in connection with the programme.

□ Disregard

The pension, investment, property, foreign and notional income of a person, and where appropriate her/his partner, is added together. If the annual amount is less than £300, it is disregarded. If the annual total is £300 or more, only the amount in excess of £300 is taken into account as annual income.

3.4.5.2 Stage two

Calculate and add together:

- earnings;
- social security income;
- student income;
- miscellaneous income;
- trading income.

□ Earnings

Employment income is the gross income received from an employer (including taxable expenses) less any contributions to a personal or occupational pension (approved by HMRC) and/or certain deductions.

To calculate annual earnings from a fixed gross weekly earnings figure, divide gross weekly earnings (minus relevant deductions) by 7 and multiply by 365 (or 366 in a leap year).

Earnings include:

- strike pay and Statutory Sick Pay;

- Statutory Maternity Pay, Statutory Paternity Pay or Statutory Adoption Pay in excess of £100 per week;
- tips or gratuities, bonuses, commission and overtime payments and payments made on an employee's behalf by an employer, for example rent paid by an employer direct to a landlord;
- taxable payments in connection with termination of employment or with change in duties or wages including:
  - redundancy payments (statutory or otherwise);
  - pay in lieu of notice; and
  - employment tribunal (ET) awards for unfair dismissal (although the first £30,000 of an ET award for unfair dismissal is ignored);
- payments for work done while in prison.

Deductions can be made for the following in accordance with amounts allowed under relevant sections of the Income Tax (Earnings and Pensions) Act 2003, (ITEPA):

- fees and subscriptions to professional bodies;
- employee liability and indemnity insurance;
- entertainers expenses;
- payments to charities under payroll deduction scheme.

The following are not considered as earnings where they attract tax relief under the ITEPA or HMRC Concessionary Schemes:

- the first £8,000 of qualifying removal expenses;
- expenses paid which are wholly, exclusively and necessarily incurred in the performance of employment;
- travel expenses which qualify for tax relief;
- travel expenses for home leave for naval, military or air force personnel;
- reimbursement for car parking space;
- incidental overnight expenses up to a maximum of £5 per night in the UK or £10 overseas;
- value of a meal voucher reduced by fifteen pence a day;
- the use of vouchers for sports or recreational facilities;
- long service non-cash award (limited to £50 per year of service);
- daily subsistence allowance;
- payment under staff suggestion scheme below the taxable limit;
- travel and subsistence allowances payable due to public transport disruption as a result of industrial action;

- one tax free mobile phone;
- gifts consisting of goods, voucher or token below £250. This does not apply to gifts from the employer;
- childcare vouchers or credit tokens providing they are used for childcare treated as relevant childcare for WTC purposes;
- home worker's additional household expenses;
- travel, accommodation and subsistence costs for work outside the UK including travel for a spouse and child where absence lasts at least 60 days;
- travel expenses for work in the UK if living outside the UK;
- payment for work related or individual learning account training;
- payment of retraining course expenses for a person leaving employment;
- expenses of a religious minister including rent deduction;
- amount of salary given up under the Home Computer Initiative Scheme (from April 2004);
- expenses for personal security;
- fixed sum deductions for repairing and maintaining work equipment.

◻ Social security income

Social security income includes:

- Bereavement benefits (except bereavement payment);
- CA;
- child dependant increases payable with Incapacity Benefit, CA, Retirement Pensions and bereavement benefits;
- Contribution-based JSA;
- ESA(C);
- ex gratia payments in respect of any of the above;

Social security income does not include the following:

- any contribution to an approved personal or occupational pension scheme;
- Attendance Allowance;
- bereavement payment;
- Child Benefit;
- Christmas bonus;
- DLA;
- PIP;

- Discretionary Housing payment;
- extra statutory payments for non-payment or loss of Income Support, JSA, Housing Benefit or in lieu of milk tokens or vitamins;
- Guardian's Allowance;
- Health in Pregnancy Grant;
- Housing Benefit;
- Income Support (except for strikers);
- Income-related ESA (ESA(IR));
- industrial injuries benefit (except industrial death benefit);
- JSA(IB);
- jury or witness payments (but not compensation for loss of earnings or benefits);
- Maternity Allowance;
- PC;
- Social Fund payments;
- Statutory Maternity Pay (it counts as earnings instead);
- Statutory Paternity Pay (it counts as earnings instead);
- Statutory Adoption Pay (it counts as earnings instead);
- Statutory Sick Pay (it counts as earnings instead);
- any child or adult dependant addition paid with any of the above benefits.

☐ Student income

Student grants and loans are ignored except for grants for dependants which are taken into account.

The grant for dependants is taken into account except for the additional allowance payable for a student eligible for a childcare grant and the allowance for books, travel and equipment.

☐ Miscellaneous income

Any income not included above but subject to taxation is taken into account.

☐ Income from self employment

A self employed person will have her/his income assessed on the basis of taxable profits for the relevant period. This includes trading outside the UK and profit from renting out property if this is counted as a business. The gross amount of any contributions to an approved personal pension scheme or retirement pension can be ignored.

3.4.5.3 Stage three

Add together all the income from steps 1 and 2 to find the total income and apply any disregards.

3.4.5.4 Stage four: disregarded income

Income disregarded in full for the purposes of tax credits includes:

- expenses in relation to charitable or voluntary work;
- expenses in relation to training undertaken under Section 1 of Employment Training Act (NI) 1950, or at an employment rehabilitation centre, providing these are not taxable as profits; or
- payment under New Deal 50 plus;
- payment made under the Disabled Persons Employment Act (NI) 1945 or Employment and Training Act (NI)1950;
- top ups paid in relation to particular employment programmes, providing these are not taxable as profits;
- discretionary training payment to meet special needs on specific training programmes;
- Education Maintenance Allowance or other payments made to take advantage of educational facilities;
- foster care payments providing the annual amount is no more than £10,000 plus £200 a week for a child under eleven or £250 a week for each child aged eleven or over;
- boarding out and fostering fees;
- adoption payments that are exempt from income tax under the Taxes Act;
- travel expenses to hospital under the Department of Health, Social Services and Public Safety scheme;
- expenses paid to visit someone in custody;
- payments under community care direct payment scheme;
- any payment made under the Health and Personal Social Services (Direct Payments) (NI) Order 1996 or The Carers and Direct Payments Act (NI) 2002;
- vouchers paid to former asylum seekers or their dependants;
- any payment made to an approved personal or occupational pension scheme;
- any payment of maintenance made (or due to be made) by the person’s former partner (or the person’s partner’s former partner);
- any payment of maintenance made (or due to be made) by the parent of a child or qualifying young person who is part of the household of the person claiming. This does not apply to maintenance payments made by the person claiming (or partner);

- provident payments by a trade union;
- payments under the supporting people programme;
- the gross amount of any gift aid donation to charity;
- rental income up to £4,250 per year for renting a furnished room in the home in which you live.

3.5 Step 5: calculate the threshold amount

The amount of tax credits a person will receive is calculated by comparing income to an income threshold amount.

The income threshold figures for 2016/2017 are:

- £6,420 if a person is entitled to WTC; and
- £16,105 if a person is entitled to CTC only.

If a person's income does not exceed the income threshold, the maximum tax credit is awarded.

Where income exceeds the income threshold, a taper is applied to reduce entitlement below the maximum.

The above are annual rates. The threshold amount is calculated on a pro rata basis by taking the relevant threshold figure, dividing it by the number of days in the tax year and multiplying it by the number of days in the relevant period. Round this figure up to the nearest penny.

3.6 Step 6: compare income with threshold amount

If income is the same as or less than the threshold amount, maximum tax credits, the childcare element and the family element are paid.

If income exceeds the threshold amount, calculate 41 per cent of the excess. This is known as the reduction figure.

The reduction figure should be rounded down to the nearest penny.

3.7 Step 7: apply reductions

The amount of tax credits is calculated by applying the following reductions.

- Reduce the maximum WTC by the reduction figure (ie 41 per cent of the excess). Do not include maximum CTC, childcare element or family element at this stage.
- If the reduction figure is more than maximum WTC, reduce the childcare element (if payable) by the income that is remaining.
- If the reduction figure is **more** than the maximum WTC and the childcare element, maximum CTC is reduced by the income that is remaining.

The family element will now be reduced straight after the previous elements. The family element is reduced by £1 for every £2.45 of income left. In previous years the family element was reduced separately, and only where income was more than £40,000.

3.8 Step 8: calculate entitlement to tax credits

Entitlement to tax credits will be:

- if the reduction figure is **less** than maximum WTC:
    - the amount remaining after reduction of WTC; plus
    - any childcare element (if payable); plus
    - maximum CTC; plus
    - the family element;
- if the reduction figure is **less** than maximum WTC and childcare element (if payable):
    - the amount remaining after reduction of maximum WTC and childcare element; plus
    - maximum CTC; plus
    - the family element;
- if the reduction figure is **less** than maximum WTC, the childcare element (if payable) and maximum CTC:
    - the amount remaining after reduction of maximum CTC; plus
    - the family element.

3.9 Examples

3.9.1 Example 1

Jane, who is 29, is a lone parent with one child aged four. She works 25 hours a week. Her current year income is £7,800 which is the same as last year. She pays £135 per week to a registered child minder who looks after her child. Her circumstances are unlikely to change in the current year. She is claiming at the start of the tax year.

Please note that rounding up the daily rate means that the maximum tax credits are slightly more than the annual rate.

- **Step 1: work out the relevant period**

Jane's relevant period is 365 days.

- **Step 2: calculate maximum tax credits**

WTC	
Adult element	£1,960.05
Lone parent element	£2,011.15
Max WTC	**£3,971.20**
CTC	
Child element	£2,781.30
Family element	**£547.50**

- **Step 3: calculate the childcare element**

Weekly childcare cost	£135.00
70% of weekly cost	£94.50
Actual childcare costs	£135 x 52 = £7,020.00
Childcare element	70% of £7,020 = £4914

- **Step 4: calculate income**

Current year income	£7,800.00
Previous year income	£7,800.00
Relevant income	£7,800.00 (previous year income)

- **Step 5: calculate the threshold amount**

As Jane is entitled to WTC, the threshold amount is £6,420.

- **Step 6: compare income with threshold**

Income	£7,800.00
Threshold amount	<u>£6,420.00</u>
Excess income	£1,380.00
Income exceeds threshold by	£1,380.00
41% of £1,380.00	£565.80
Reduction figure	£565.80

- **Step 7: apply reductions**

Reduce maximum WTC by the reduction figure.

Maximum WTC	£3,971.20
Less reduction figure of	<u>£565.80</u>
Equals	£3,405.40

- **Step 8: calculate entitlement**

WTC after reduction	£3,405.40
Plus childcare element (WTC)	£4,914
Plus max CTC (other elements)	£2,781.30
Plus family element (CTC)	£547.50
Entitlement to tax credits	£11,648.20
Weekly entitlement	**£223.39** (£11,648.20 ÷ 365) X 7)

3.9.2 Example 2

Liz and Mark, both aged 35, are married with one child aged fourteen. Mark works 35 hours per week. Their current year income is the same as last year at £18,500. Their circumstances are unlikely to change in the near future. The claim is made at the start of the tax year.

- **Step 1: work out the relevant period**

Their relevant period is 365 days.

- **Step 2: calculate maximum tax credits**

WTC

Adult element	£1,960.05
Couple element	£2011.15
30 hour element	£810.30
max WTC	**£4,781.50**
CTC	
Child element	**£2,781.30**
Family element	**£547.50**

- **Step 3: calculate the childcare element**

Not applicable as there are no eligible childcare costs.

- **Step 4: calculate income**

Current year income	£18,500.00
Previous year income	£18,500.00
Relevant income	£18,500.00 (previous year income)

- **Step 4: calculate threshold amount**

Threshold figure	£6,420.00

- **Step 5: compare income to threshold**

Income	£18,500.00
Threshold	£ 6,420.00
Excess	£12,080.00
Income exceeds threshold by	£12,080.00
41% of £12,080	£ 4,952.80
Reduction figure	£ 4,952.80

- **Step 6: apply reductions**

Reduce maximum WTC by the reduction figure.

Maximum WTC	£4,781.50
Less reduction figure of	£4,952.80
Equals	Nil with £171.30 still remaining

Reduce maximum CTC by the income remaining.

Maximum CTC	£2,781.30
Less income remaining	£171.30
Equals	£2,610.00

- **Step 7: calculate entitlement**

CTC	£2610.00
Plus family element (CTC)	£547.50
Entitlement to tax credits	£3157.50
Weekly entitlement	**£60.55**
	(£3,157.50 ÷ 365) X 7)

3.9.3 Example 3

Mary and Ruth, both aged 49, are civil partners with two children aged sixteen and seventeen who are still at school. They both work 35 hours a week. Their current year income is £36,500, an increase of £26,500 from last year as Ruth has just started work. Their other circumstances are unlikely to change in the current year. They make a claim for tax credits at the start of the tax year and also provide details of current year's income.

The initial claim will be assessed on their previous year's income of £10,000 and then revised using current year income of £36,500 minus £2,500, therefore £34,000.

The revised assessment will therefore be as follows.

- **Step 1: work out the relevant period**

Mary's relevant period is 365 days.

- **Step 2: Calculate maximum tax credits**

WTC	
Adult element	£1,960.05
Couple element	£2011.15
30 hour element	£810.30
Max WTC	**£4,781.50**
CTC	
Child element (16 year old)	£2,781.30
Child element (17year old)	£2,781.30
Max CTC	**£5,562.60 plus**
Family element	**£547.50**

- **Step 3: calculate the childcare element**

Not applicable as there are no eligible childcare costs.

- **Step 4: calculate income**

Current year income	£36,500 (increase of £26,500 from previous year)
Previous year income	£10,000
Relevant income	£34,000 (current year's income minus £2,500)

- **Step 5: calculate threshold amount**

Threshold figure	£6,420.00

- **Step 6: compare income to threshold**

Income	£34,000
Threshold	£6,420.00
Excess	£27,580.00
Income exceeds threshold amount by	£27,580.00

41% of £27,580	£11,307.80

The reduction figure is £11,307.80

- **Step 7: apply reductions**

Reduce maximum WTC by the reduction figure.

Maximum WTC	£**4,781.50**
Less reduction figure	£11,307.80
Equals	Nil with £6,526.30. left over
Reduce maximum CTC by the income remaining.	
Maximum CTC	£5,562.60
Less income remaining	£6,526.30
Equals	Nil with £963.70 left over

- **Step 8: calculate entitlement**

CTC remaining after reduction	Nil with £963.70 left over
Family element (CTC)	£547.50
Less reduction figure	£963.70
	= Nil with 416.20 left over
Entitlement to tax credits	Nil
Weekly entitlement	**Nil**

4. CALCULATING CHILD TAX CREDIT

The following calculation relates to a person claiming CTC who has no entitlement to WTC.

Step 1: work out the relevant period;

Step 2: calculate maximum CTC;

Step 3: calculate income;

Step 4: calculate the threshold amount;

Step 5: compare income with threshold amount;

Step 6: calculate entitlement.

4.1 Step 1: work out the relevant period

The relevant period is worked out as outlined in section 3.1.

4.2 Step 2: calculate maximum Child Tax Credit

In order to calculate the maximum amount of CTC the following elements are added together:

- family element baby addition for a child or children under twelve months old (but please see 2.2.1 for changes to the rules on entitlement to the child element due to take effect after 6 April 2017);
- child element for each dependent child (but please see 2.2.2 for changes to the rules on entitlement to the child element due to take effect after 6 April 2017);
- disability element for each child who receives DLA or is certified as severely sight impaired or blind by a consultant ophthalmologist or ceased to be certified as severely sight impaired or blind by a consultant ophthalmologist in the last 28 weeks.
- severe disability element for each child who receives DLA highest rate care component.

The family element is not included at this stage.

4.3 Step 3: calculate income

Calculate the relevant income for the tax year. Income for CTC is calculated in the same way as for WTC.

4.4 Step 4: calculate threshold figure

The threshold figure for April 2016/2017 for those claiming CTC only is £16,105.00.

4.5 Step 5: compare income to threshold figure

If the income is the same as, or less than, the threshold amount, maximum CTC plus the family element is paid.

If income exceeds the maximum amount, calculate 41 per cent of the difference and round down to the nearest penny. This is the reduction amount.

4.6 Step 6: calculate entitlement to CTC

Take the reduction amount away from the maximum CTC. The amount payable will be the difference plus the family element.

5. CLAIMING TAX CREDITS

A claim for tax credits must be made to the appropriate office in writing on an approved form. The same form is issued for both the CTC and the WTC and no distinction is made between the two tax credits on the form. A claim made in another way may be treated as sufficient to be considered as a valid claim.

The date of claim will be the date on which the application is received at the appropriate office. However, the claim may be backdated for up to 31 days where a person has qualified for tax credits during this period. In certain circumstances, a renewal claim can be backdated for longer periods but this depends on when the annual review form is returned. A new claim for WTC can be backdated longer than 31 days if a person has a disability and is waiting on the outcome of a claim for a disability benefit (and certain other conditions are met).

A married couple, civil partners, a couple living together as husband and wife or a same sex couple living together must make a joint claim. A person who is not a member of a couple makes a single claim.

The claim must include all the relevant information. Payments of tax credits may be postponed where the Revenue has asked for further information or evidence in relation to an award. In particular, the claim must include a national insurance number or information that would enable a national insurance number to be allocated to the person claiming unless there is a reasonable excuse for not providing this information. **Note:** This requirement does not apply to a person who is subject to immigration control because s/he does not have leave to enter or remain in the UK and who has not been given a national insurance number. There is an immigration status condition attached to tax credits and specific rules for couples where one partner only has the necessary immigration status. For more details contact Law Centre (NI).

If a claim is made in advance of the tax year, the award period will last for a year. Where the claim is made during the tax year, the award period will run to the end of the tax year. An award period can be made up of one or more relevant periods. See section 1.3 for further information on a relevant period.

A final notice is sent out at the end of the tax year (see 6.4). The information given in response to the final notice will be used to calculate the next tax year's entitlement. Therefore, it is important to respond to the final notice and ensure that any relevant change of circumstances is notified.

6. DECISIONS

There are different types of decision that can be made on a claim. These are:

- initial decision;
- revised decision;
- other revised decisions;
- final notice leading to a decision after final notice.

6.1 Initial decision

On receipt of a claim, HMRC is required to notify the person claiming of the award, if any, of tax credit. This is known as the initial decision and will be based on the information on the claim form which asks for previous year's income.

The notification of award will contain details of the changes of circumstances which the person **must** report, and the time limits for reporting them. It also gives details of the changes of circumstances which the person should report (see section 7).

6.2 Revised decision

Following the initial decision, HMRC will review the claim on the basis of the information supplied, where there has been a change of circumstances which affects the amount of the award.

As the award may be affected by a relevant change of circumstances, it is important that the change of circumstances is reported (see section 7).

6.3 Other revised decisions

HMRC can also review any award of a tax credit at any time where it has reasonable belief that the rate of award is incorrect. This may lead to the award being amended or terminated. A tax credits decision can also be revised in favour of the claimant if it is incorrect due to an official error. An official error is defined as an error by the

Revenue, DWP, or person providing services to the Revenue or DWP in connection with tax credits.

6.4 Final notice

At the end of each tax year (between April and July), HMRC will send out final notices to each person who has been awarded tax credits for the whole or part of the tax year. Each person in a joint claim will receive one. This should be an automatic process and a person claiming should not have to ask for one.

The notices confirm details of each tax credit award, including initial and any revised decisions, for the tax year just ended (ie 2015/2016). They are the process by which both the amount awarded for that year can be checked and finalised and a claim for the new tax year (ie 2016/2017) is renewed (see section 6.5). They take the form of annual review packs.

A pack will be issued with the following details.

- The annual review form (TC603R) contains details of personal circumstances on which entitlement to tax credit in 2015/2016 was based. This includes:
  - names and dates of birth of each person claiming plus any qualifying children or young people;
  - details of any employment and childcare costs;
  - details of any additional elements of CTC and WTC paid because of disability.

  The person claiming will also be asked to confirm that income for the tax year 2016/2017 will be within the range specified on the form. The person is expected to confirm that the details are correct or to notify HMRC of any changes.
- The annual declaration form (TC603D) seeks details on each person's relevant income or an estimate of income for the tax year 2015/2016. The form also asks the person to confirm that the circumstances in the annual review form are correct or to set out any changes to the information supplied. The declaration must be signed alongside the notice that this constitutes a claim for tax year 2016/2017.

An annual declaration made by either member of a couple can be treated as a renewal. In automatic reply cases (ie where a person has a nil award or is only receiving the family element of Child Tax Credit), only TC603R will be issued. This will tell the person that s/he will automatically be finalised and the entitlement renewed unless the information provided of the previous and current year's details on the form is incorrect. The person claiming is advised to contact HMRC if the details are wrong. HMRC will accept that the circumstances were as set out in the notice, unless notified of a change.

In all other cases, although there may be no changes to report, a person will be asked to respond and confirm that the details are correct, as appropriate. A declaration or statement in response to a final notice must be made:

- by the date specified on the section 17 notice issued by HMRC; and
- in writing in a form approved by HMRC for that purpose; or
- orally to an officer of HMRC; or
- in other such manner as HMRC may accept as sufficient in the circumstances of any particular case.

In the case of an existing joint claim and where a response is made orally, one of the couple may act for both.

Claimants now also have the option to withdraw their claim at the annual review stage by specifying that the annual declaration is not to be treated as a renewal claim from 6 April in the new tax year. Claimants will have to contact the Revenue separately to do this.

6.5 Decision after final notice

On return of the final notice form(s), a final decision (decision after final notice) will then be made on entitlement to tax credits for the year just ended (ie 2015/2016) which may include confirmation of the initial decision or detail any overpayment or underpayment. The final decision can be revised if a person makes a new response to the final notice before the final date given for the original response.

The return of the end of the year notice will also be treated as a renewal claim for the tax year 2016/2017 although a person who wishes to cease claiming can respond to the final notice without it being treated as a new claim. A new initial decision will be made for this year. Until this happens, tax credits will continue to be paid on a provisional basis at the 2015/2016 rate. The initial decision for 2016/2017 can be subsequently revised if HMRC is informed of a relevant change in circumstances.

If the return is made by the date specified on the section 17 notice issued by HMRC, the effective date of the claim will be 6 April 2016 and the award will be backdated automatically. If the return is not made by the date specified on the notice, the provisional award will stop and any amount paid as a provisional award after 6 April 2016 will be recovered as an overpayment.

If the return is made after the date specified on the section 17 notice issued by HMRC but before 31 January 2017 and good cause has been established, the effective date of the claim will be 6 April 2016 and the award will be backdated automatically. This does not apply where the person claimed previously as a single person and s/he is now a member of a couple or there was a previous joint claim and s/he is now a single person.

Good cause is not defined in the regulations. If a person cannot establish good cause, the effective date of the claim will be the date the return is received by HMRC and the normal rules for backdating will apply.

If a person fails to respond until after 31 January 2017, a claim cannot be renewed. Instead a fresh claim must be made which can only be backdated for 31 days.

7. CHANGES IN CIRCUMSTANCES

Awards of CTC and WTC will usually run for the whole of the tax year if made in advance, or from the date of claim until the end of the tax year if made during the tax year.

Certain changes of circumstances will affect entitlement to tax credits and must be notified to HMRC within one month of the change or the date the person became aware of the change if this is later.

HMRC may impose a penalty for failure to notify the following changes within one month:

7.1 Changes in family status

- a person who claimed as an individual has married, entered into a civil partnership or has begun to live with someone as if husband and wife or civil partners. Her/his entitlement will come to an end and a fresh claim must be made as a couple;
- a person who claimed as part of a couple but has separated under a court order or in circumstances where the separation is likely to be permanent. Entitlement will cease and a fresh claim will have to be made as a single person;
- a member of the couple has died or left the country permanently or for more than eight weeks (or more than twelve weeks in listed circumstances);
- a person loses her/his right to reside in the UK;

7.2 Reduced childcare costs

- childcare costs stop or go down by £10 per week or more over four consecutive weeks;

7.3 Reduced working hours

- a person stops working;
- her/his hours drop below sixteen hours per week;
- her/his hours drop below 30 hours per week. For couples with children, their joint working hours count towards the 30 hours;
- s/he has been on strike for more than ten days;

- for couples with children, their combined working hours drop below 24 or 30 hours per week.

7.4 Children and young people

- a child/young person:
    - moves out to live with someone else or dies;
    - starts to claim Income Support, JSA(IB), CTC or WTC;
- a young person aged between sixteen and 20 leaves full-time education, starts training provided under a contract of employment or starts paid work (usually for more than 24 hours per week).

7.5 Other changes of circumstances

A person does not have to notify HMRC of the changes set out in 7.5.1 to 7.5.3 when they occur but can wait until annual renewal.

However, please note that it is usually in a person's best interests to notify changes promptly. If the change leads to an increase in entitlement, in most circumstances it can only be backdated to three months from notification. There are a number of exceptions to this:

- where a person is waiting on the outcome of a claim for a disability benefit that affects entitlement to the disability or severe disability element. Providing a person flags up in her/his claim for WTC or CTC that a claim for a disability benefit is in the pipeline and notifies HMRC of the award of the disability benefit within three months, then the disability or severe disability element will be backdated to the date of the original claim;
- a similar rule applies if already getting WTC (ie tell HMRC about a pending claim for a disability benefit);
- it is also in a claimant's interest to notify promptly changes of circumstances that will reduce entitlement to tax credits. If a notification results in an overpayment, this will be calculated from the date of the change of circumstances. Under the new rules on recovery of overpayments, HMRC allows itself 30 days from notification to change the award and will recover any overpayments arising in the 30 day period.

The circumstances which HMRC does not require to be reported until annual renewal are:

7.5.1 Increased working hours and income

- usual working hours increase to more than sixteen or 30 per week. Couples with children will have their joint hours counted toward the 30 hours;

- income goes down or up;
- change in employment;

7.5.2 Increased childcare costs

- childcare costs go up by £10 or more per week for at least four weeks in a row;

7.5.3 Children/young people

- a young person over sixteen continues in full-time education, registers with a careers service, joins an approved training scheme;
- a person has a baby/a new child joins the family.

7.6 What happens following change of circumstances

The claim will then be recalculated, a new relevant period established and a revised award will be issued.

Where HMRC decides not to make an award or to terminate an award, any entitlement or subsequent entitlement for the same year is dependent on a new claim being made.

8. WORKING TAX CREDIT RUN-ON

A person who has been in remunerative work of sixteen hours or more and:

- stops work; or
- starts working less than sixteen or thirty hours a week

will be entitled to a four week run-on of WTC.

To qualify, a person must have been in remunerative work immediately before the change in hours worked. Where the run-on rule applies, a person's entitlement to WTC will extend to all the elements the individual or couple was formerly entitled to (including the childcare element where the other conditions were met).

A person may be eligible to claim Income Support, ESA(IR), JSA and other income related benefits while in receipt of the WTC run-on. WTC run-on will count in full as income for these benefits. However, claimants are no longer automatically entitled to maximum WTC due to receipt of these benefits during the 'four week run-on' after stopping work.

9. PAYMENTS

CTC will be paid directly to the main carer of a child or young person. Payment will be made into her/his bank, building society or post office card account on a weekly or four weekly basis in arrears.

WTC will be paid to the person who is working. Where both members of a couple work over sixteen hours a week, either can choose to be paid. Where there is no agreement between a couple as to who should receive WTC or the couple are not resident at the same address, HMRC will decide who gets the payment. Where WTC includes a childcare element, this will be paid with CTC to the main carer through her/his bank or building society account.

A person will be paid WTC directly by credit transfers to her/his bank account or similar type account.

Tax credits can be paid by giro-cheque for up to eight weeks to allow the person claiming to set up a bank, building society or post office card account. Arrangements have also been made to allow a person to open a basic account accessible through the post office. At the end of this eight week period, payment of tax credits will stop if HMRC has not received the account details. No further payment will be issued unless the person claiming can show good reasons as to why more time is needed. Where payments cease and HMRC is later notified of the account details, entitlement is reinstated and can be backdated for three months.

If WTC and/or CTC is calculated to be less than £26 for the year, no payment is made.

If a payment is delayed or some other error occurs leading to a person incurring extra costs, HMRC may make a compensatory payment. For more details, see HMRC Code of Practice number 26, *What happens if we have paid you too much tax credit*, available from https://www.gov.uk/government/publications/tax-credits-what-happens-if-youve-been-paid-too-much-cop26 and *Law Centre (NI) Encyclopedia of Social Welfare Rights A7.2 Recovery of Overpayments*.

9.1 Overpayments

Where the amount of tax credits paid for a tax year exceeds actual entitlement, HMRC may raise an overpayment.

Liability for repayment rests with the person(s) awarded the tax credit. In joint claims, both persons are jointly and severally liable.

The liable person(s) must receive written notification of the amount of overpayments and the required method of recovery. Overpayments will normally be recovered from future awards of tax credits.

Where an overpayment is likely to arise in an existing claim, HMRC can alter an existing award of tax credit to prevent or reduce this possibility.

There is no provision to allow for a mandatory reconsideration and then appeal against recovery of overpayment. However, the decision that gave rise to the overpayment can be appealed, ie if the person disputes that there has been any overpayment or disputes the actual amount of the overpayment. Overpayments can also be written off. See HMRC Code of Practice 26 '*What happens if we have paid you too much Tax Credit?*' available from https://www.gov.uk/government/publications/tax-credits-what-happens-if-youve-been-paid-too-much-cop26 and *Law Centre (NI) Encyclopedia of Social Welfare Rights A7.2 Recovery of Overpayments*.

The Code of Practice sets out the claimant's and HMRC's responsibilities in relation to the claim. It then sets out what overpayments will be written off in whole or part or recovered in full. HMRC has power to give more time for repayment in cases of financial hardship.

If HMRC does not follow its Code of Practice, it is worth pursuing the issue through HMRC's complaints procedure and on to the independent adjudicator.

9.2 Underpayments

An underpayment can arise:

- where the amount of tax credit paid in a tax year is less than actual entitlement; or
- where no payment of tax credit is made where there is actual entitlement.

HMRC must repay the amount of underpayment. It may do so by means of a lump sum at the end of the year. If a person claiming is aware that an underpayment is occurring, s/he should notify HMRC and the award can be adjusted immediately.

10. OFFENCES AND PENALTIES

HMRC has the power to determine and impose penalties where a person has fraudulently or negligently made an incorrect statement or declaration or has provided incorrect information or evidence or has failed to comply in the provision of evidence and information or in notifying specified changes in circumstances.

10.1 Determination of penalties

Determinations on penalties will be made by HMRC. On making a determination to apply the penalty, HMRC must notify the person of the penalty, stating the date of issue and detailing the right to appeal. Once HMRC has made a determination and decided the amount of the penalty, the penalty can only be altered on appeal. The person will have 30 days in which to pay the penalty or lodge the appeal. An appeal must be lodged in writing.

10.2 Fraud

A person will have committed the criminal offence of fraud if s/he knowingly undertakes any fraudulent activity with a view to obtaining payment of tax credits for her/himself or any other person.

HMRC has a wide range of powers to obtain evidence in cases of suspected tax credit fraud. It can obtain orders requiring the production of documents and warrants to enter, search and remove information from premises if there is reasonable grounds for suspecting fraudulent activity.

The penalties for fraud are:

- on summary conviction, imprisonment for a period not exceeding six months and/or a fine not exceeding £5,000; or
- on conviction on indictment, imprisonment for a period not exceeding seven years and/or an unlimited fine or both.

If an overpayment has arisen due to fraud, and it is not repaid within the specified time period, interest may be applied to all or part of the overpayment.

10.3 Incorrect statements

A penalty of up to £3,000 may be imposed on a person who fraudulently or negligently:

- provides an incorrect statement or declaration in relation to a claim; or
- fails to provide the required information or evidence; or
- fails to notify a relevant change of circumstances which may affect entitlement.

A person will be given 30 days in which to appeal or pay the penalty. Failure to do so may result in interest being applied to the penalties.

In respect of joint claims, a penalty may be imposed in full or in part on the partner unless s/he was not, and could not, have been aware that her/his partner had made an incorrect statement or declaration or given incorrect information or evidence. However, the aggregate of the two penalties must not exceed £3,000.

Penalties may also be imposed on a person who has acted for another person in relation to a claim, notification or notice, where s/he has acted fraudulently or negligently.

HMRC must determine any penalty in respect of incorrect statements within one year of the latest of:

- the expiry of the time limit for starting an enquiry into entitlement to a tax credit (an enquiry must start within one year of the decision to award a tax credit); or
- the date on which an enquiry into entitlement to a tax credit is completed; or

- discovery that the original decision was incorrect.

10.4 Failure to comply

Where a person fails to provide relevant information or evidence in relation to a claim or fails to notify a change of circumstances that may affect entitlement to tax credits, a penalty of up to £300 may be imposed. See section 7 for a list of changes or circumstances that must be notified.

Continued failure to provide information or evidence may result in a further penalty of up to £60 for each day that the failure to comply continues. The additional penalty will cease once the evidence or information has been provided.

In respect of joint claims, the penalties can be imposed on both people claiming but the aggregate amount of the initial penalty must not exceed £300 and the aggregate of the continuing fine must not exceed £60 per day.

Failure to pay the penalties by the due date may result in interest being applied.

A person will be exempt from these penalties where:

- the information or evidence is provided within a further time limit set by HMRC; and
- s/he had a reasonable excuse for not complying; and
- after having such an excuse, s/he complied without unreasonable delay.

HMRC must determine any penalty in respect of any failure to comply within one year of the latest of:

- the expiry time for starting an enquiry; or
- the date on which the enquiry is completed.

10.5 Recovery of penalties

Outstanding penalties will be treated as outstanding tax payments and will be recovered through tax codes. HMRC has discretion whether it imposes a penalty, the amount of the penalty, or how much of a total penalty it will enforce.

A person could ask HMRC to use its discretion not to enforce a penalty where to do so would cause hardship. A person could also try and negotiate as regards the amount to be levied, or the amount recoverable, depending on the individual circumstances of the case. This might be productive where, for example, the person tried their best to comply with their obligations but was unable to through no fault of their own.

Once HMRC has made a decision to impose a penalty and agreement reached with the person, it will send them a contract which sets out the terms of the agreement in writing. If an agreement cannot be reached, HMRC can use its legal powers to recover the penalty. This includes the power to take court action for bankruptcy.

A person has the right to request a mandatory reconsideration of a decision imposing a penalty and/or the amount of the penalty. These decisions can then be appealed.

10.6 Interest

If an overpayment has occurred as a result of fraud or neglect, interest can be charged on the whole or part of the overpayment being recovered.

Where HMRC has revised a decision in the reasonable belief that a person is not entitled to tax credits and as a result the claim is terminated, any overpayment will have interest charged from 30 days after the date of the decision to terminate the award. In most other cases, the interest will be charged from 30 days following the date by which the person is required to reply to a final notice (see 6.4). Interest will also be charged on penalties and will be applied from the date the penalty becomes due.

The method for calculating the percentage interest to be applied is quite complex. It is 6.5 percent per year or, if that is different from the average of the lending rate of six main banks, their lending rate plus 2.5 per cent.

There is no right to request a mandatory reconsideration of, or right of appeal against, a decision to charge interest.

11. APPEALS

11.1 Action before appeal / Mandatory Reconsideration

Anyone who wants to challenge a tax credits decision which has been made on or after 6 April 2014 needs to ask for a Mandatory Reconsideration before appeal.

This means HMRC will look at its decision again and see if the decision can be changed, either fully or partly.

The mandatory reconsideration application form can be accessed from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464036/WTCAP.pdf

HMRC will then write to the person to inform her/him of the outcome of the Mandatory Reconsideration. This letter should also advise the person how s/he can then appeal directly to the tribunal via the Appeal Service – 'direct lodgment' – if s/he is not satisfied.

11.2 The appeal

Initially, tax credit appeals will be heard by the Appeals Service, with further right to appeal to the Social Security Commissioner.

An appeal can be made against:

- initial decisions;
- revised decisions;
- decisions taken following an inquiry into entitlement;
- decisions taken after final notice;
- decisions to charge interest on overpayments attributable to fraud or neglect; and
- determinations of penalties.

The appeal form can be accessed from:

https://www.nidirect.gov.uk/publications/appeals-form-noa1-hmrc

There is not a right of appeal against a decision to recover an overpayment as opposed to a decision as to whether an overpayment has actually occurred.

A person has 30 days in which to lodge an appeal. The appeal must be lodged in writing and must specify the grounds for appeal.

The tribunal is only obliged to consider the grounds stated in the letter of appeal. However, the tribunal may allow a person to put forward grounds not previously specified where it is satisfied that the omission was not wilful or unreasonable.

An appeal must:

- have a copy of the determination on the application for mandatory reconsideration (a 'mandatory reconsideration notice';
- be in writing (can be e-mail); and
- contain sufficient information to identify the person appealing and the decision against which the appeal is being made; and
- be signed by or on behalf of the person appealing.

12. TRANSITIONAL ARRANGEMENTS

Tax credits replace child dependant additions for certain benefits and personal allowances and premiums for children. This is being introduced in stages.

12.1 Child dependency increases

From 6 April 2004, the child dependant addition included in existing claims for Incapacity Benefit, CA, Retirement Pension and bereavement benefits was abolished.

12.2 Personal allowances and premiums for dependent children

From 6 April 2004, claims for Income Support and JSA(IB) no longer include personal allowances and premiums for dependent children. People with existing claims will continue to have personal allowances for children included in their benefit until the premiums are replaced by CTC. From the point that CTC is awarded, it ceases to count as income for Income Support and JSA(IB).

13. THE BENEFIT CAP

The benefit cap applies in Northern Ireland from 31 May 2016. However, claimants of WTC will be exempted from the benefit cap.

13.1 What is the benefit cap

The benefit cap limits the amount, in total, that claimants can receive from a list of specified benefits including CTC. The cap for single claimants is currently £350 a week and £500 for couples with, or without, dependent children, and lone parent families. Most benefit income is taken into account:

- Bereavement Allowance;
- Child Benefit ;
- Child Tax Credit;
- Employment and Support Allowance;
- Guardian's Allowance;
- Housing Benefit;
- Incapacity Benefit;
- Income Support;
- Jobseeker's Allowance;
- Maternity Allowance;
- Severe Disablement Allowance;
- Widowed Parent's Allowance;
- Widowed Mothers Allowance;
- Widows Pension.

Where a person's benefit entitlement exceeds the cap, the reduction will be from the person's Housing Benefit award.

It is expected that the Benefit Cap maximum benefit earnings are to be reduced to £258 for single claimants (currently £350) a week and £385 (currently £500) for couples with, or without, dependent children, and lone parent families.

13.2 Exemptions to the benefit cap

The cap will not apply where the person claiming or her/his partner is receiving one of the following benefits:

- Disability Living Allowance (including if received for a dependent child);
- Working Tax Credit;
- Attendance Allowance;
- Industrial Injuries Disablement Benefits;
- Employment and Support Allowance, if paid with the support component;
- War Widow's or War Widower's Pension;
- Carer’s Allowance.

The cap will also not apply where the person claiming or her/his partner had in at least 50 out of the last 52 weeks been in employment and not entitled to Income Support, JSA or ESA. In these circumstances, the cap will not apply for 39 weeks from the day after the last day of employment.

Two additional exemptions apply in Northern Ireland as part of the welfare reform mitigations:

- the first ensured that those in receipt of Carer’s Allowance were exempt from the cap but this is has now been inserted into the legislation;
- the second one ensures that any families with children not exempt under the above provisions will receive a supplementary payment to compensate for any deduction made as a result of the cap being applied. This applies for up to four years.

14. LEGISLATION

Relevant legislation includes:

Tax Credits Act 2002
Tax Credit (Prescribed Period of Awards) Regulations 2002
The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002
The Child Tax Credit Regulations 2002
The Tax Credits (Definition and Calculation of Income) Regulations 2002
The Tax Credits (Claims and Notifications) Regulations 2002
The Tax Credits (Interest Rate) Regulations 2003
The Tax Credits (Appeals) Regulations 2002
The Tax Credits (Appeals) (No 2) Regulations 2002

The Tax Credits (Notice of Appeal) Regulations 2002
The Tax Credits (Administrative Arrangements) Regulations 2002
The Tax Credits (Payment By Board) Regulations 2002
The Tax Credits (Payment By Employer) Regulations 2002
The Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002
The Tax Credits (Approval of Home Childcare Providers) Scheme 2003
The Tax Credits (Immigration) Regulations 2003
The Tax Credits (Residence) Regulations 2003
The Tax Credits (Official Error) Regulations 2003
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003
The Social Security Commissioners (Procedure) (Tax Credit Appeals) Regulations 2002
The Tax Credits (Polygamous Marriages) Regulations 2003
Tax Credits (Provision of Information) (Evaluation and Statistical Studies) Regulations 2003
The Social Security Child Support and Tax Credits (Miscellaneous Amendments) Regulations (NI) 2005
The Tax Credits (Approval of Childcare Providers) Scheme 2005
The Tax Credit Up-Rating Regulations 2005
Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) (Amendment) Order 2005
Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations 2004
Tax Credits (Miscellaneous Amendments No. 2) Regulations 2004
Tax Credits Up-Rating Regulations 2004
Tax Credits (Miscellaneous Amendments No. 3) Regulations 2004
Tax Credits (Provision of Information) Evaluation and Statistical Studies (Northern Ireland) Regulations 2004
Tax Credits (Approval of Child Care Providers) Scheme 2005
Tax Credits (Provision of Information) functions relating to Employment and Training Regulations 2005
Tax Credits (Miscellaneous Amendments) 2009
The WTC Entitlement and Maximum Rate) Amendment regulations 2009
The Tax Credits, Child Benefit and Guardians Allowance Reviews and Appeals Order 2014
The Child Benefit (General) and Tax Credits (Miscellaneous Amendments) Regulations 2014
The Child Benefit (General) and the Tax Credits (Residence) (Amendment) Regulations 2014 (SI.No.2014/1511)
Tax Credit (Income Thresholds and Determination of Rates) (Amendment) Regulations 2016 (S.I No. 393/2016)

15. FURTHER INFORMATION

Welfare Benefits and Tax Credits Handbook, 17th Edition, CPAG, 2016/2017, £61.00.

Social Security Legislation 2014/2015 (Vol IV): Tax Credits and HMRC–Administered Social Security Benefits (Nick Wikeley, David Williams and Ian Hooker) £160.00* (including updating supplement in March 2015).

*Both these books are available from CPAG, 94 White Lion Street, London N1 9PF.

HMRC's website has copies of forms, leaflets and answers to frequently asked questions at www.hmrc.gov.uk.

A7 APPENDIX 1

TAX CREDITS SCHEDULE 1

Disability which puts a person at a disadvantage in getting a job

Parts 1 and 2

A person will be at a disadvantage in getting a job where s/he:

- cannot keep her/his balance unless s/he continually holds onto something;
- using crutches, walking frames, walking stick, prosthesis or similar walking aid which s/he habitually uses, cannot walk a continuous distance of 100 metres along level ground without stopping or without suffering severe pain;
- can use neither of her/his hands behind her/his back as in the process of putting on a jacket or of tucking a shirt or blouse into a waistband;
- can extend neither of her/his arms in front of her/him so as to shake hands with another person without difficulty;
- can put neither of her/his hands up to her/his head without difficulty so as to put on a hat;
- cannot, due to lack of manual dexterity, pick up a coin which is not more than two and a half centimetres in diameter with one hand;
- is not able to use her/his hands or arms to pick up a full jug of one litre capacity and pour from it into a cup, without difficulty;
- can turn neither of her/his hands sideways through 180 degrees;
- has been certified as blind or partially sighted. Because of this, s/he is also registered as blind or partially sighted on a register maintained by, or on behalf of, a Health and Social Services Board;
- cannot see to read sixteen point print at a distance greater than 20 centimetres, if appropriate, wearing the glasses s/he normally uses;
- cannot hear a telephone ring when s/he is in the same room as the telephone, if appropriate, using a hearing aid s/he normally uses;
- in a quiet room, has difficulty in hearing what someone talking in a loud voice at a distance of two metres says, if appropriate, using a hearing aid s/he normally uses;
- when speaking, has difficulty being understood by people who know her/him well;

- when a person s/he knows well speaks to her/him, has great difficulty in understanding what that person says;
- at least once a year during waking hours, is in a coma or has a fit in which s/he loses consciousness;
- has a mental illness for which s/he receives regular treatment under the supervision of a medically qualified person;
- is often confused or forgetful due to mental disability;
- cannot do the simplest addition and subtraction;
- due to mental disability, strikes people or damages property or is unable to form normal social relationships;
- cannot normally sustain an eight hour working day or a five day working week due to a medical condition or intermittent or continuous severe pain;
- is undergoing a period of habilitation or rehabilitation as a result of an illness or accident (applies to initial claims only). This condition cannot apply where s/he has been getting the disability element of WTC in the last two years.