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

TAX CREDITS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: Penalties for fraud etc. and failures to comply

Section 9 contains the sanctions to deter fraud and support the Inland Revenue's powers of investigation. The provisions for imposing the penalties and appeals against them are contained in Schedule 4.

Section 9(1) provides that a person will be liable to a penalty if they fraudulently or negligently make a false statement or declaration in relation to a claim. The penalty will not exceed the amount specified in section 9(2).

Section 9(2) provides that the amount of the penalty will not exceed the difference between the amount of tax credit the claimant is actually entitled to and the amount he would have been entitled to if the claim had been correct. Section 9(1) and (2) reproduce the effect of s.95 of TMA, in relation to the tax credits. Appeals against these penalties will be to the unified appeal tribunals set up by the Social Security Act 1998.

Section 9(3) provides for a penalty for failure to provide information, or produce or deliver documents. It applies to:

- the information powers in the Social Security Administration Act 1992 and corresponding Northern Ireland provisions (section 9(3)(a));
- regulations relating to employers under section 6 (section 9(3)(b));
- the use of s.20 of TMA for employer compliance (section 9(3)(c)).

For (a) and (c), no penalty can be imposed after the offence is remedied. For (b), an initial penalty can be imposed, but no continuing penalty, after the offence has been remedied. This follows the approach of s.98 of TMA, which distinguishes obligations based on notices from other obligations. Appeals against these penalties under section 9(3)(a) will be to the unified appeal tribunals set up by the Social Security Act 1998 or the corresponding Northern Ireland legislation. Appeals against penalties under section 9(3)(b) or (c) will be to the tax commissioners.

Section 9(4) provides the amount of the penalty to be imposed under section 9(3). This will be a penalty not exceeding £300, and if the failure continues, further penalties not exceeding £60 a day for each day the failure continues. This mirrors the penalties in s.98(1) of TMA.

Section 9(5) provides that a person shall be liable to a penalty, not exceeding £3000, for fraudulently or negligently furnishing, producing or delivering incorrect information. Like section 9(3) it applies to:

- the information powers in the Social Security Administration Act 1992 or the corresponding Northern Ireland legislation (section 9(5)(a));
- regulations relating to employers under section 6 (section 9(5)b));

- the use of s.20 of TMA for employer compliance (section 9(5)(c)).

This mirrors the provisions in s.98(2) of TMA. Appeals against these penalties under section 9(5)(a) will be to the unified appeal tribunals set up by the Social Security Act 1998. Appeals against the penalties under section 9(5)(b) or (c) will be to the tax commissioners.

Section 9(6) provides for a penalty to be imposed where an employer refuses or repeatedly fails to make payments of tax credits, so that the Inland Revenue has to take over direct payment. The penalty will be an amount not exceeding £3000. Appeals against these penalties will be to the tax commissioners.

Section 9(7) provides for a penalty to be imposed where an employer fraudulently or negligently makes or receives incorrect payments of tax credits; or delivers an incorrect return. The penalty will only be applicable once in respect of each employee, and will not cover matters already dealt with under section 9(6), where the Revenue has had to intervene. Appeals against these penalties will be to the tax commissioners.