*[Template NHS employer letter to in-scope employees]*

*[Date]*

To: [All consultants and other clinical staff who have the potential to be impacted by annual allowance pensions tax during 2019/20 and meet the eligibility criteria set out in the NHS England FAQs]

Dear Colleague,

**PENSIONS TAX IMPACTS ON THE NHS – A SOLUTION FOR 2019/20**

Many of you have had first-hand experience of the effect on work patterns caused by the annual allowance pensions tax, and the annual allowance taper. Each have impacted on an increasing number of clinical staff in the NHS Pension Scheme.

NHS England and NHS Improvement (“NHSEI”) accept that a longer term solution is required urgently but are now taking action to address the issue in order to reduce the negative impact of the pensions tax on the delivery of NHS services during the tax year 2019/20.

The specific purpose of this letter and the accompanying FAQ document is to set out how this will work in practice, and also to re-assure you that as your employer, [*the Trust*], is completely committed to playing its part in ensuring that clinicians who exceed their annual allowance as a result of the growth in their NHS Pension Scheme benefits in this financial year can now use the NHSEI mechanism to ensure that you do not suffer any negative financial consequences as a result.

You are therefore now immediately able to take on additional shifts or sessions during the remainder of 2019/20 without worrying about paying an annual allowance charge with respect to your NHS pension benefits now, or the tax charge impacting on your income in future.

The legal status of this letter is that it will constitute a formal variation to your contractual terms of employment with [*the Trust*], to incorporate an offer of a contractual additional salary payment from the Trust in retirement. This means that if you use the NHS Pension Scheme ‘Scheme Pays’ mechanism to pay your pensions annual allowance tax charge with respect to 2019/20, you will receive additional payments from [the Trust] ensuring that you are fully compensated in retirement for the effect of the 2019/20 Scheme Pays deduction on their income from the NHS Pension Scheme in retirement. Further detail on scheme pays is included in the accompanying FAQs.

Subject to the eligibility criteria and other details set out in this letter and accompanying FAQs, this means that in the event that:

1. You incur a pensions annual allowance tax charge with respect to the 2019/20 tax year as a result of your membership of the NHS Pensions Scheme (the ‘Tax Charge’); and
2. You elect to have the Tax Charge paid by the NHS Pension Scheme under the “Scheme Pays” facility; then
3. where an amount becomes payable to you under the NHS Pension Scheme and the amount of such payment is reduced as a result of payment of the Tax Charge, your NHS employer (backed by NHS England and ultimately the Secretary of State for Health and Social Care) will make a contractually binding commitment to make additional payments to you of a sum equal to the amount of this reduction, including any reduction to a tax free lump sum, grossed up for applicable taxes at that point in time. These payments shall become due and owing on the same date as the date of any payment that becomes due as a result of your accrued NHS pension rights.

This arrangement will ensure that you are fully compensated in retirement for the effect of the Scheme Pays deduction on your income from the NHS Pension Scheme in retirement. You will need to pay tax on these additional salary payments at the prevailing marginal rate at the time these payments are made, as you would have done on your pension payments prior to a “Scheme Pays” deduction. Your entitlement to these additional payments will immediately cease and the right to receive future payments is extinguished if the Secretary of State directs that your NHS Pension Scheme benefits are reduced or withheld entirely in exercise of powers[[1]](#footnote-1) to forfeit such benefits upon conviction for treason, serious offences in connection with employment to which the pension scheme relates, or specific offences under the Official Secrets Acts 1911 to 1989 or in recovery of losses to public funds that resulted from criminal, negligent or fraudulent actions.

The arrangements specified above and the contract variation to implement those arrangements, will take effect automatically unless you write to us at the address given at the head of this letter, formally objecting to the proposed variation of your contract.

We understand that staff may be worried or anxious that any commitment from the Trust which is given now (but which may not come into effect until many years in the future), might in some way be at risk of being lost or eroded over time. However, the legally binding contractual offer given by [*the Trust*] in this letter, to make additional payments in retirement, like the benefit promise under the NHS Pension Scheme itself, is also underwritten by the Government. We have also received an equivalent confirmation from NHS England that the Trust and its successors will be funded to meet these costs in future. Should the Trust cease to exist, there are statutory provisions to ensure its liabilities, including commitments to staff, would be transferred to one or more existing NHS bodies, or the Secretary of State. As such these payments, as contractual liabilities will be honoured even if the Trust no longer exists in the future or defaults for any reason in making these payments.

This means that all financial commitments entered into by [the Trust] are safeguarded. [The Trust] confirms that, in the event that it is subject to any future re-organisation involving the proposed dissolution of the Trust (for example, a merger), it undertakes to take all reasonable steps to secure that the liabilities created by this agreement are provided for in any transfer order or scheme made by Secretary of State or NHS Improvement and transferred to the Trust’s successor body, another NHS body or the Secretary of State. The liability to make the payments under this arrangement is not contingent on your remaining as an employee of [the Trust].

**This letter therefore gives you the necessary assurance to be certain that you can undertake any combination of NHS roles during the 2019/20 tax year without suffering any financial loss as a result of the annual allowance pensions tax, subject to using the Scheme Pays mechanism as explained in the FAQ document.**

This will apply to registered doctors, nurses, AHPs and other clinicians in active clinical roles who are members of the 1995/2008 and 2015 NHS Pension Schemes. It will apply to all pension savings built up in the NHS Pension Schemes in 2019/20 (but not annual allowance tax charges which may arise due to pension savings you have built up outside the NHS Pension Schemes, nor additional voluntary contributions (AVCs) within the NHS Pension Scheme such as additional pension purchases in 2019/20). You will be able to have this charge paid by the NHS Pension Scheme by completing and returning a ‘Scheme Pays’ election before the 31 July 2021 deadline meaning that you don’t have to worry about paying the charge now out of your own pocket. In certain circumstances you may need to make this election earlier, we will provide further guidance on the necessary steps well in advance of any deadline.

Please do take some time to read the accompanying FAQs, which can be found at <https://www.england.nhs.uk/pensions/> which should help you understand how the new initiative operates, and what you need to do in order to ensure that it works for you personally.

Some other pension flexibilities are also being introduced locally by [*the Trust*] alongside the new NHSEI initiative. Please don’t ignore these other flexibilities, although some of these may not offer you the advantages of remaining in the NHS Pension Scheme. Further pension flexibilities are expected to be introduced by DHSC in 2020 which may help in reducing the ongoing risk of you breaching the annual allowance pension tax threshold in the future.

Finally, pensions tax is a complex subject. NHS Employers have provided guidance on the pensions annual allowance available at www.nhsemployers.org/pay-pensions-and-reward/pensions/pension-resources/annual-and-lifetime-allowance.

Yours faithfully

1. 1995 Section: regulations T5 and T6 of the National Health Service Pension Scheme Regulations 1995; 2008 Section: regulations 2.J.6, 2.J.7, 3.J.6 and 3.J.7 of the National Health Service Pension Scheme Regulations 2008; 2015 Scheme: paragraphs 11 and 12 of Schedule 3 to the National Health Service Pension Scheme Regulations 2015 [↑](#footnote-ref-1)