*[Template non-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;
* meet the eligibility criteria set out in the NHS England FAQ;
* not employed by an NHS employer; and
* do most of their NHS work for this employer]

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. The purpose of this letter, and the accompanying online FAQs, is to set out how the 2019/20 Annual Allowance Compensation Policy, “the commitment”, will apply to employees of independent sector providers of NHS services.

The Government has announced changes to the rules for pension contribution tax relief from April 2020, but the commitment applies to the 2019/20 tax year.

**Who is in scope and the offer**

NHS England and NHS Improvement is committed to ensuring that clinicians who meet the criteria set out in the publish FAQs (“eligible clinicians”) can take advantage of the offer. The main criteria are that the clinician:

* is a member of the NHS Pension Scheme in the tax year 2019/20
* is employed or engaged in a role that requires registration with an appropriate healthcare regulatory body,
* has a valid registration for the period of the “Scheme Pays” election
* receives a tax charge associated with breaching the annual allowance in 2019/20 in respect of membership of the 1995, 2008 and 2015 NHS pension schemes.

The mechanism for the Compensation Policy with FAQs on eligibility and other matters are available at [www.england.nhs.uk/pension](http://www.england.nhs.uk/pension).

As set out in the FAQs, clinicians working for non-NHS organisations are eligible for this commitment providing they were delivering NHS services in 19/20 and meet the overall eligibility criteria.

Under the policy, [*name of non-NHS organisation*] (backed by NHS England and ultimately the Secretary of State for Health and Social Care) is making a contractually binding commitment to make additional payments to you 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. The amount payable will be 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 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 income tax on these additional salary payments at the prevailing marginal rate at the time these payments are made, as you would normally be expected to do with any pension payments (which are not tax free lump sum payments). 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.

**Contractual Variation**

The legal status of this letter is that it will constitute a formal variation to your contractual terms of employment with [*name of non-NHS organisation*], to incorporate an offer of a contractual additional payment from that organisation in retirement. This means that if, by 31 January 2021, you use the NHS Pension Scheme ‘Scheme Pays’ election facility to pay your pensions annual allowance tax charge with respect to 2019/20, [*name of non-NHS organisation*], or where applicable its successor[[2]](#footnote-2), will be liable to make additional payments, 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. Although the contractual commitment is from [*name of non-NHS organisation*], these compensation payments will be administered by the NHSBSA, who are also responsible for administering the NHS Pension Scheme, and made to you directly when you start to draw your pension. Further detail on Scheme Pays is included in the FAQs which can be found on <https://www.england.nhs.uk/pensions/>.

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.

**Reassurance for staff**

We understand that staff may be worried or anxious that any commitment from their employer 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. We have received confirmation from NHS England that [*name of non-NHS organisation*] and its successors will be funded to meet these costs in future. Should [*name of non-NHS organisation*] cease to exist its financial commitments would be safeguarded. [*name of non-NHS organisation*] confirms that, in the event that it is considering a restructure which involves the proposed dissolution of the organisation or the transfer of its business to another entity (for example, a merger or acquisition), it undertakes to take all reasonable steps to secure that the liabilities created by this agreement are provided for in the relevant business transfer agreement or arrangements for dissolution.

In addition, the legally binding contractual offer given by [*name of non-NHS organisation*] 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. So in the event that the liability to make the payments is not transferred to another party the Department of Health and Social Care would take responsibility for ensuring that the payment was made.

The liability to make the payments under this arrangement is not contingent on your remaining as an employee of [*name of non-NHS organisation*].

**This letter therefore gives you the necessary assurance to be certain your work for the NHS during the 2019/20 tax year will not result in any financial loss for you as a result of the annual allowance pensions tax, subject to using the Scheme Pays mechanism as explained in the FAQ documents available on**<https://www.england.nhs.uk/pensions/>**. This includes any additional work related to the response to the coronavirus outbreak.**

You will be able to have the 19/20 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.

You will also need to complete an application form. This can be found, along with the accompanying FAQs, on the NHS England website at <https://www.england.nhs.uk/pensions/>. The FAQs should help you understand how the initiative operates, and what you need to do in order to ensure that it works for you personally.

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](http://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)
2. The contractual liability entered into by your employer may transfer to another entity, for example, on a corporate re-structure or transfer of services. [↑](#footnote-ref-2)