

2008/09 LIMITED COMPANY CERTIFICATE – FAQs

GENERAL

Q. What is the deadline for completing the 2008/09 Ltd Co Certificate?

A. The deadline for completing the 2008/09 Certificate and sending it to the host PCT/LHB is the 28th of February 2010; i.e. within one calendar month of the tax return deadline.

Q. What is a host PCT/LHB?

A. The host PCT/LHB in respect of a GP Provider is either the (listing) PCT/LHB on whose Performers List the GP Provider is registered with or the commissioning PCT/LHB. Therefore a GP Provider may have more than one host PCT/LHB.

In respect of a non-GP Provider the host PCT/LHB is always the one they hold a GMS/PMS/APMS contract with; i.e. the commissioning PCT/LHB.

Q. Why do I have to complete the Certificate on an annual basis?

A. A Provider's pensionable pay is based on their NHS income, less expenses. Therefore the only way to measure a Provider's pensionable pay is for them to complete an individual Certificate.

Q. Where should the Certificate be sent after it has been validated by the PCT/LHB?

A. The PCT/LHB keeps the Certificate. The GP (or their accountant) must retain a copy.

Q. I have retired from my Provider post; do I still have to complete the Certificate?

A. Yes, although you may no longer be an active Scheme member you must complete the Certificate in respect of the year(s) that you were a 'pensionable' Provider

You may also wish to complete the Certificate solely for the purposes of establishing the seniority allowance even if you were not an active Scheme member in 2008/09.

Q. What happens if a Provider does not complete the Certificate?

A. It is a mandatory requirement of NHS Pension Scheme membership that Providers must complete the Certificate. Those Providers who do not are in breach of the statutory NHS Pension Scheme Regulations and may receive a nil pay credit even though they have paid contributions on account. This would have a detrimental effect on their (and their dependents) NHS pension benefits.

Q. I am a non-GP Provider; do I still complete the Ltd Co Certificate?

A. Yes. Every non-GP Provider must complete the Certificate annually. As non-GP Providers are classed by the Scheme as 'whole time Officers' (regardless of the hours they work) they can only be 'pensionable' in one post and therefore may only be required to complete one Certificate. By virtue that non-GP Providers are classed as WT they must decide, after seeking expert advice, which of their NHS posts should be pensionable.

Q. I am a GP Provider (i.e. Partner/shareholder) in several GMS/PMS/APMS Practices; do I need to complete several Certificates?

A. Yes, even if the Practices are located within the same PCT/LHB boundary. Each Practice will have its own 'ring fenced' contract and budget.

- Q. I am a GP Provider; do I have to complete more than one Certificate if I had more than one host PCT or LHB in the same year?**
- A. If you relocated during the year then you must complete a Certificate in respect of each Practice. However, if your host PCT/LHB changed due to a PCT/LHB re-organisation (but you did not change Practices) only one Certificate is required. If you moved from England or Wales to Scotland or Northern Ireland you will need to complete one Certificate in respect of England/Wales and another in respect of Scotland/Northern Ireland.
- Q. I am a salaried GP (i.e. a Performer) directly employed (i.e. schedule E) by a Practice, PCT, LHB, or SPMS/APMS Provider; do I have to complete the Certificate?**
- A. No, your NHS pensionable pay is based on your basic salary however you must also 'pension' any NHS fringe (i.e. OOHs and PEC) by completing form SOLO. You will be required to complete a Certificate at the end of pensions year 2009/10.
- Q. What do I do if I am subject to 'pensions overlap'?**
- A. You should seek assistance from an accountant; please refer to separate 'overlap' guidance.
- Q. What is a NHS Pension Scheme Employing Authority (EA)?**
- A. A Scheme Employing Authority, for the purposes of 'pensioning' GPs NHS income (as a Provider) is a NHS Trust, NHS Foundation Trust, Primary Care Trust, Local Health Board, OOHP, and their own Practice.
- Q. Are GP shareholders eligible for seniority payments?**
- A. GP shareholders should seek clarification from their PCT/LHB.
- Q. Why are seniority payments declared in the Certificate and what if seniority payments are pooled?**
- Q. My GMS/PMS/APMS Practice converted from being a partnership to a limited company on the 1st of October 2008, how does this affect the Certificate?**
- A. Each GP (and non-GP) Provider must complete 2 Certificates, the main Certificate covering the period 01/04/2008 to 30/09/2008 and the Ltd Co Certificate covering the period 01/10/2008 to 31/03/2009.
- Q. I am a GP with my own Ltd Co Practice however, for tax reasons, have separately set up another Ltd Co as a 'vehicle' for my fringe NHS (i.e. PEC, OOHs) income to flow through; is this pensionable?**
- A. No. If you have set up a limited company yourself (as an individual) that is a separate legal entity to your Practice any income that is paid to you cannot be pensionable. This is because the 'unique' limited company that you have set up does not qualify under the Regulations as an 'Employing Authority' or 'GP Provider'.

DIVIDENDS & SALARY

- Q. The GP (and non-GP) Providers (i.e. shareholders) draw down their profits as a combination of salary and dividends. Are the dividends pensionable?**
- A. Where a Practice is a limited company, any dividends 'drawn down' are pensionable (with effect from April 2006) subject to them being solely in respect of NHS work.
- Q. Are the gross dividends or the net dividends pensionable?**
- A. The net dividends.
- Q. Are all the net dividends and salary pensionable?**
- A. No, only those wholly attributable to your NHS income.

Q. Is a capital distribution of funds pensionable?

A. No. Only income in the form of dividends and salary taken are pensionable.

Q. For a GP shareholder taking a salary, why is superannuation not deducted at source like for other staff?

A. Because different NHS Pension Scheme rules apply for GPs.

Q. What happens when there are sources of non-NHS income in the company accounts?

A. That element of non-NHS income must be stripped out of the dividend and salary so that it is not pensioned.

Q. How is the non-NHS income stripped out of a salary?

A. Simply by applying the percentage of NHS income to total income from the company accounts year end falling into the tax year 2008/09 to the salary taken in that tax year.

Q. But where the accounting year-end is not March, the percentage applied to the salary will not have been calculated upon the income for the period the salary was earned?

A. That is correct. However, for the ease of application, a straightforward method has been implemented.

Q. Not all dividends have to be distributed. Where the ratio of NHS to total income varies year on year, can the payment of dividends not be manipulated to ensure higher or lower pensionable pay as desired?

A. No. There is a pooling method of carrying forward undistributed NHS profits based upon the proportion of NHS income for the year in which they were deemed to be earned and which restricts pensionable pay where more than the potential NHS dividend is taken.

Q. What happens when an existing company has undistributed reserves brought forward from a time before an NHS contract was entered into?

A. Nothing. The pooling system still strips out dividends that relate to non-NHS income to ensure that the total NHS income is never more than the amount of pensionable dividend available in relation to NHS earnings.

Q. What if there are undistributed NHS reserves that are not distributed as dividends when the shareholder sells the shares?

A. The opportunity to pension those reserves is lost as the final distribution is one of capital.

Q. In a year where no dividends are paid, what is the theoretical dividend?

A. In a year where no dividends are paid, a method must be applied that allocates the after-tax profits of the year to each eligible shareholder so that the consistency of the pool is maintained. This is achieved by calculating a shareholder's theoretical entitlement should all those year's after-tax profits have been distributed as dividends to all holders of dividend earning shares, of whatever class. Where the company's resolutions do not pre-designate a rate for any particular class of share, each class of share should be deemed to have the same entitlement to dividend.

Q. What if I became a shareholder part of the way through an accounting period?

A. To maintain simplicity, the theoretical entitlement will be worked out based upon the In a year where no dividends are paid, a method must be applied that allocates the after-tax shareholdings at the end of the accounting period.

Q. What happens if I dispose of or acquire shares?

A. The working of the Certificate will not be affected as the pensionable pay follows your entitlement regardless of the level. Your entitlement to dividends decreases or increases appropriately.

Q If, once I have received a dividend payment, I decide to reinvest some of that money back into the company, will this affect my pensionable pay?

A. No. Funds reinvested by shareholders are designated as loans and will not therefore alter the company's profits. Consequently the same income will not be pensioned twice.

Q. What are the tax implications regarding the 'pensioning' of dividends?

A. NHS Pensions cannot provide financial advice. HMRC has recently advised NHS Pensions that under the new tax regime for registered pension schemes they do not dictate how a registered scheme should calculate the benefits they wish to provide or what constitutes 'pensionable earnings'.

However HMRC has advised that tax relief on an individual's contributions to a registered pension scheme (such as the NHS Pension Scheme) is available in respect of contributions up to 100% of that person's relevant UK earnings chargeable to income tax for the tax year in which the contribution is paid. The term 'relevant UK earnings' is defined at section 189(2) FA 2004. As set out at RPSM05101150 it covers:

- employment income such as salary, wages, bonus, overtime, commission providing it is chargeable to tax under Section 7(2) ITEPA 2003
- income chargeable under Part 2 ITTOIA 2005, that is income derived from the carrying on or exercise of a trade, profession or vocation (whether individually or as a partner acting personally in a partnership)
- income arising from patent rights and treated as earned income under section 833 (5B) ICTA 1988.

HMRC has advised that dividends and other distributions are charged to tax under Chapter 3 of Part 4 of ITTOIA 2005. They do not, therefore, constitute 'relevant UK earnings'. But provided the Provider has relevant UK earnings from their employment as a director or from other sources this can be used to cover their employee contributions to NHS Pension Scheme for tax relief purposes even though some of these contributions are used to pension dividend income.

With regards to employer contributions HMRC has advised that where a GP Provider is a partner in a practice, it is for the GP individually to claim tax relief in respect of the 14% employer contributions payable. However where a GP Provider is a shareholder/director in a limited company GP Practice it is the limited company in effect that pays the 14% employer contributions.

HMRC has further advised that if this is the case then tax relief in respect of employer contributions may not be claimed by the GP; per section 188(3)(b) FA 2004. Instead, the employer may be entitled to relief by way of a deduction for its employer contributions provided the 'wholly and exclusively' test is satisfied as per section 196 FA 2004 (see RPSM05102010). The HMRC Business Income Manual at pages 46001 'et seq' gives guidance on applying the 'wholly and exclusively' test to contributions to a registered pension scheme.

TIERED EMPLOYEE CONTRIBUTIONS/EMPLOYER CONTRIBUTIONS

Q. How are a GP (or non-GP) Provider's tiered contributions assessed in 2008/09?

A. They are basically based on their 2006/07 total Provider pay, examples as follows.

2006/07 *Total Provider Pensionable Pay 2008/09 Tiered Rate

Up to £19,165.00	5%
£19,166.00 to £63,416.00	6.5%
£63,417.00 to £99,999.00	7.5%
£100,000.00 plus	8.5%

* APMS/GMS/PMS + PEC + OOHs

The flowcharts in Annex B of Technical Newsletter (TN) 5/2008 provide more detailed guidance, please refer to <http://www.nhsbsa.nhs.uk/Pensions/2499.aspx>.

Q. The tiered employee contribution rate in 2008/09 is based upon the level of 2006/07 pensionable pay, but I only started part way through that year and my pensionable pay in 2008/09 is much higher. Do I still pay employee contributions in 2008/09 at the lower rate designated by the lower pensionable pay of 2006/07?

A. Yes, this rule was agreed between the BMA and the Dept. of Health and is unique to year 2008/09.

Q. I only started as a Provider in 2007/08; what rate should I use?

A. You should follow the flowcharts in Annex B of Technical Newsletter (TN) 5/2008, (<http://www.nhsbsa.nhs.uk/Pensions/2499.aspx>). It is likely you should use your pensionable pay for 2007/08 as a 'yardstick'

Q. I only started as a Provider on or after 01/08/2008; what rate should I use?

A. You should refer to Technical Newsletter (TN) 24/2008, <http://www.nhsbsa.nhs.uk/Pensions/2499.aspx> and take note of the revised thresholds.

Q. I thought, in pension terms, Bed Fund posts were considered as Practitioner post? Why are these not included in the aggregate of earnings for 2006/07 for determining the allocation to a tier for 2008/09?

A. Whilst strictly Bed Fund posts are classed as type I Practitioner earnings, it is not practical to include such posts when calculating the 2008/09 tiered rate. There is a conflict between the requirement to ensure that the superannuation on the Bed Fund post is correct (in other words, to include it in the Certificate so adjustments can be sorted there), or to remove it from the Certificate as income pensioned separately to prevent it being pensioned twice. As it is recognised that there are winners and losers by fixing the tier by allocation to an earlier year's income, it has been decided that it would be more practical to prevent the latter of these conflicts than pursue the former. Bed Fund income from 2006/07 should therefore not be considered when setting the 2008/09 rate and should continue to be deducted from the Certificate at Box 26 as income pensioned separately.

Q. Who is responsible for the payment of any arrears of NHS Pension Scheme contributions?

A. Generally it is the GMS/PMS Practice or APMS Contractor rather than the individual GP (or non-GP) Provider.

Q. What happens if contributions have been overpaid because a Provider's NHS pensionable pay was over estimated?

- A. The host PCT/LHB must repay the overpaid contributions without delay.

PENSIONABLE INCOME

Q. What is classed as NHS pensionable pay in 2008/09?

- A. Please see Annex A below.

Q. I am a GP; do I have to 'pension' all of my NHS GP work?

- A. Yes, you must 'pension' all of your NHS GP (Practitioner) income; you cannot opt out of 'pensioning' certain parts of Practitioner income.

You can opt out of pensioning salaried Officer posts such as hospital based clinical assistant or community posts however you cannot opt out of pensioning bed fund posts.

Q. I am a GP Provider, can I pension income as a GP Provider through my own Practice earned from working for another Practice that I may (or may not) be involved in as a Partner or shareholder?

- A. No. This is strictly forbidden under the NHS Pension Scheme Regulations.

Q. I am a GP Provider, can I 'pension' work as a GP Locum in my own Practice(s)?

- A. No. This is strictly forbidden under the NHS Pension Scheme Regulations.

Q. Is medical school income pensionable?

- A. No. Although some medical schools are granted special Scheme 'Direction' Status, any fees paid to a GP (or Practice) by a medical school are not 'pensionable'. Only salaried employees of an open 'Directions body' may join the Scheme.

Q. Is prison work pensionable?

- A. Yes, however only if the fees are being paid directly to the GP/Practice by the PCT/LHB.

Q. How should PEC income be recorded?

- A. All GPs (except GP Locums) must 'pension' their PEC income. GP Partners/Shareholders and single-handers can elect to either SOLO or pool their PEC income. If they elect to SOLO their PEC income the relevant PEC employer (i.e. PCT/LHB) will deduct contributions at source and forward these to the host PCT/LHB. If the PEC employer has also deducted tax and national insurance at source the GP should ensure that they are not liable to pay these again. If the GP has elected to pool their PEC income (i.e. paid directly into the Practice account to be shared) they must ensure that the fee takes account of employer contributions as ultimately the GP/Practice will be responsible for forwarding these to the host PCT/LHB.

PCTs/LHBs must not set up a unique pensionable employment in respect of fee based PEC work; this is in accordance with previous guidance, the NHS Pension Scheme Regulations, and Health Service Circular 2000/005 issued by the Dept of Health in March 2000.

Q. What is deemed pensionable sick pay?

- A. GPs who suffer a genuine loss of pensionable income as a result of illness may qualify for deemed sick pensionable pay to be credited to their pension records; they should contact their PCT/LHB or the NHS Pensions for advice. Evidence may be asked to demonstrate a genuine loss in pensionable income.

OUT OF HOURS PROVIDERS

Q. Not all OOHPs are Scheme Employing Authorities, how will I know which are?

A. Please refer to Annex B under the main Certificate's FAQs.

ADDED YEARS/ADDITIONAL PENSION

Q. I am a buying 'Added Years'; do I have to pay additional contributions on all of my NHS GP income?

A. Yes, if you are buying added years you must also pay additional contributions in respect of all your pensionable NHS income. If you were subject to the earnings cap your Added Years contributions may be capped; please refer to TN17/2008, (<http://www.nhsbsa.nhs.uk/Pensions/2499.aspx>).

Q. Where can I find more information about the new Additional Pension?

A. On NHS Pensions website; <http://www.nhsbsa.nhs.uk/Pensions/calculators.aspx>.

THE PENSIONABLE EARNINGS CAP

Q. I joined the Scheme after 1 April 1989 and understand that my pensionable pay is no longer capped. Won't that mean that I'll have a large underpayment of contributions for 2008/09?

A. Not necessarily. You should have agreed with the PCT to adjust the amount of contributions being deducted from your contract payments throughout the year to allow for a higher liability for contributions. If this was not done, there may be a significant shortfall of contributions payable.

REMEMBER: If you were subject to the earnings cap your Added Years contributions may be capped; please refer to TN17/2008, (<http://www.nhsbsa.nhs.uk/Pensions/2499.aspx>).

GP LOCUM WORK

Q. I am a GP Provider; can I work as a GP Locum in other Practices?

A. Yes, under certain circumstances. Please refer to TN 8/2009, (<http://www.nhsbsa.nhs.uk/Pensions/2496.aspx>). This work must be recorded on GP Locum forms A and B and there is a strict 10 week window for declaring this work.

Q. I am a GP Provider; can I 'pension' my GP Locum income as a GP Provider through my Ltd Co accounts?

A. No. A GP Locum pensionable post is afforded different pension rights to a GP Provider post and must be kept separate.

ANNEX A

GP Providers Pensionable Pay

GP Providers pensionable income is listed below and is subject to the payments being net of expenses. The fees must be in respect of NHS primary medical services and must be paid directly to the GP (or Practice) by a PCT, LHB, Trust, or OOHs Provider that qualifies as a Scheme EA.

- **A GMS contract.** This includes payments in respect of additional services, essential services, the global sum, quality and outcome framework, dispensing, 'PCO administered funds', premises, and IT.
- **A PMS agreement.** This includes the 'contract price' and payments similar to GMS.
- **A SPMS agreement.** Technical Newsletter 6/2007 refers.
- **An APMS agreement.** Subject to the APMS contractor being an Employing Authority; Technical Newsletter 6/2007 refers.
- **NHS appraisal work** (GP Locums cannot 'pension' this work).
- **Certification services** (i.e. medical certificates as listed in the GMS Contracts Regulations).
- **Collaborative services** in accordance with section 26(4) of the 1977 Health Act. This includes fees paid directly by a PCT/LHB in respect of adoption and fostering work, the blue (disabled) badge scheme, social services reports, 'section 12' work, priority housing reports requested by local authorities, attendance at case conferences and other meetings arranged by Social Services, certificates to enable chronically disabled or blind persons to obtain telephones, and sessional work commissioned by family planning clinics.
- **Commissioned services.** This includes fees paid directly by a PCT/LHB to GPs with special interests (GPsWSI), and also in respect of family planning, food poisoning notifications, lecture fees, marital difficulty sessions, and PCT sessions.
- **Educating medical students or GPs in a Practice.** The fees must come directly from the PCT/LHB and not a medical school or university.
- **Enhanced services** (direct, local, or national).
- **General Dental Services.**
- **General Ophthalmic Services.**
- **NHS board and advisory work.** This is non-clinical work and includes Primary Care Trust Executive Committee (PEC) work.
- **NHS dispensing services** (i.e. the provision of drugs, medicines, and appliances).
- **NHS GP Locum work.** GP Locum work must always be recorded on GP Locum forms A, B, C, or D which can be downloaded from the NHS Pensions website. It must never be recorded on form SOLO or paid (as pooled pensionable income) into the Practice accounts.
- **NHS Out Of Hours** work for a PCT, LHB, Trust, or an OOHP that is an Employing Authority.
- **Practice Based Commissioning (PBC).** Only if paid **direct** to a GP or GMS/PMS Practice by a PCT/LHB; please refer to the 'FAQs' above .
- **Prisoners' healthcare.** Fees in respect of a prisoner's healthcare are pensionable subject to the PCT/LHB paying the fees directly to the GP/Practice. If the fees are paid directly by the prison they are not pensionable because the prison is not an Employing Authority
- **Seniority payments.**
- **Honorary Posts.** Fees paid to a GP by a hospital under a 'honorary contract' may be pensionable; contact NHS Pensions for guidance.

GP Providers Income That Is Not Pensionable

Fees paid to a GP (or Practice) by a LMC, a medical school, a NHS Pension Scheme 'Direction Body' (i.e. a hospice), the police, the DWP, a Local Authority, the Ministry of Defence, or by the NHS Pensions Division (in respect of NHS ill health pension or Injury Benefit Scheme medical reports) are not pensionable.

Fees paid to a GP in respect of the national 'Drug Intervention Programme' and private fees (i.e. travel vaccination fees not funded by the NHS) are not pensionable.

Funds that a Practice may inherit from another business, by virtue of acquiring that business, and that are drawn down later as a salary or dividends are not pensionable in the NHS Pension Scheme

Non GP Providers Pensionable Pay

A non GP Provider (i.e. Partner, Single-Hander, or shareholder who is not a GP) is classed as whole time Officer for NHS Pension Scheme purposes. Their NHS pensionable pay is their share of the GMS/PMS/SPMS/APMS Practice NHS profits less expenses. This will include pensionable income in respect of 'ad hoc' GP work that any GP Partners have elected to 'pool'.

Non GP Providers must 'pension' all of their NHS Practice profits provided that they are not subject to the pensionable earnings cap.