

## Creating Pension Overlap

Pension overlap arises in the same way that overlap profits may arise for tax purposes; namely where the same pensionable income is pensioned twice.

In the same way that one should not be taxed twice upon the same income, nor should one receive the benefit of an uplifted pension by pensioning income more than once.

Pension overlap is created in the following circumstances:

1. The transitional arrangements upon transfer to the new contract at 1 April 2004, where you had been a Practitioner Scheme member prior to that date, AND
2. The method of pensioning income in:
  - a) the opening years of Practitioner membership, AND
  - b) certain changes to annual accounting dates.

### 1. Transitional arrangements

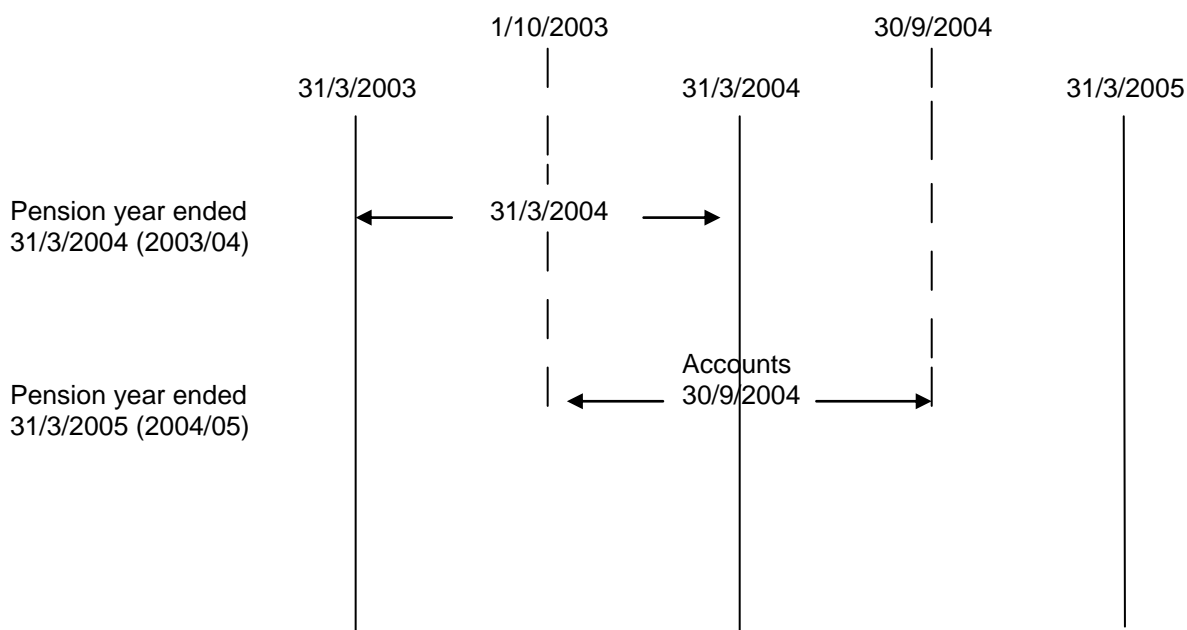
The NHS Pension Scheme Regulations were amended on 1 April 2004. At that time it was determined that pensionable NHS income, for the pension year ended 31 March, would be broadly based upon taxable profits (after adjustment) in the corresponding tax year (2004/05 for the first year).

For tax purposes, businesses are taxed in the tax year upon those annual accounts where the year end falls into that tax year. For instance, where a set of business accounts is for the year ended 30 September 2004, that would fall into the tax year 2004/05 (i.e. the year that runs from 6 April 2004 to 5 April 2005).

Following the tax principle, it was therefore determined that, taking the above example, a GP who was taxed in 2004/05 on their Practice accounts for the year ended 30 September 2004 would also have their NHS pension for the pension year 2004/05 (year ended 31 March 2005) based upon those same accounts.

As, up to 31 March 2004, NHS pensionable income was determined by the actual income earned to that date, the assessment of pensionable income in the following year may cause some income to be pensioned twice where the accounting 'year end' date is not 31 March.

Again following the example above, for a GP with an accounting year ended 30 September:



As can be seen from the above, because the income in 2003/04 has been pensioned right up to 31 March 2004, and the accounting year ended 30 September 2004 is assessed for pension purposes in

2004/05, a certain amount of income has been pensioned in both years. It can be seen that the period from 1 October 2003 to 31 March 2004 has been pensioned in both years. On a pro-rata basis of the pensionable pay calculated for 2004/05, this period represents the pension overlap and would have been entered at Box 21b of the 2004/05 Certificate. This is the figure that will now be entered at Box 39a of the 2005/06 Certificate and Box 37a of the 2006/07 Certificate as overlap profits brought forward etc.

This amount of pension overlap shall be carried forward to be deducted from the pensionable pay of a future year, unless utilised as described later.

2. Pensioning income in:

**a) The opening years of Practitioner service**

First year of Practitioner service

Again, the method of pensioning NHS income follows that for taxing income. In one's first year of self-employment, you are taxed on your profits from the date of commencement to the following 5 April. Similarly, for NHS pension purposes, you will be pensioned upon your relevant NHS profits for the period from commencement to the following 31 March, using the taxable profits relevant for that tax year as the basis of the pensionable pay (even if that profit is for the period to 5 April – please refer to the completion notes in respect of Box G of the Certificate).

Second year of Practitioner service

- i) If the accounts are made up to a date in the tax year representing exactly 12 months of income, then those accounts are used as the basis for the pensionable pay for the second year.

**Example**

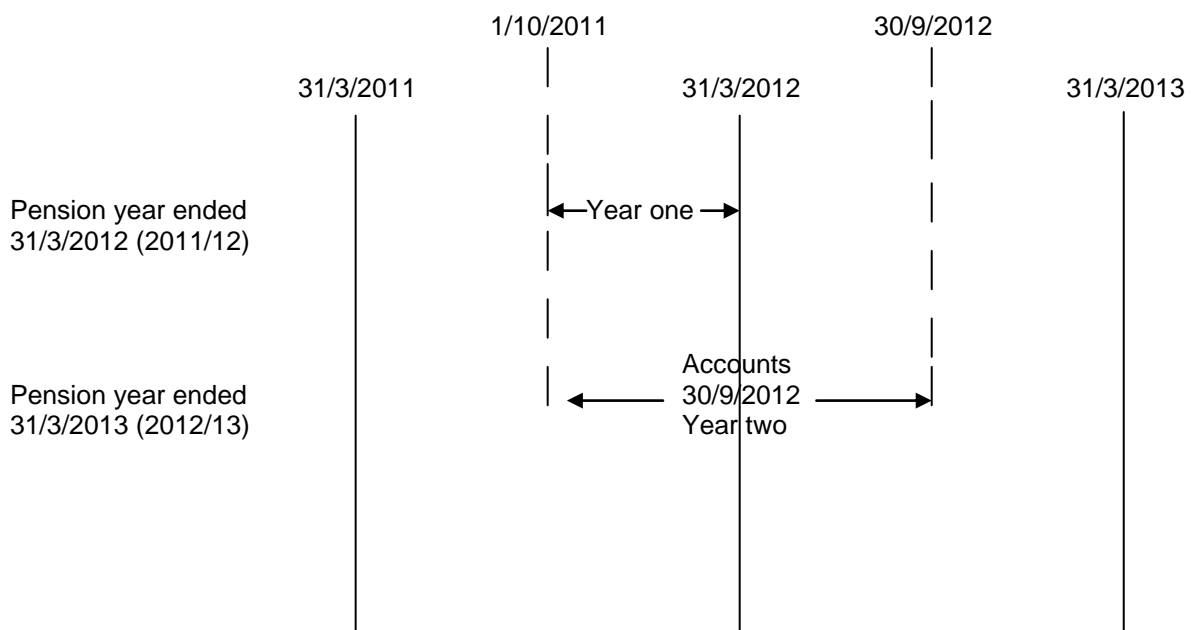
Practitioner starts 1 October 2011, in a Practice that has a usual accounting 'year end' of 30 September.

**Tax year 2011/12**

Tax on profits from commencement to following 5 April, i.e. from 1 October 2011 to 5 April 2012. This forms the basis of pensionable pay for the pension year ended 31 March 2012.

**Tax year 2012/13**

Practice accounts will be made up in this tax year to 30 September 2012



The partner joining at 1 October 2011 is pensioned on the period 1 October 2011 to 31 March 2012 in 2011/12 and on the year ended 30 September 2012 in 2012/13.

The overlap pension to be carried forward from 2012/13 onwards (not 2011/12 as no double pensioning had occurred then) is therefore the amount for the period 1 October 2011 to 31 March 2012, because this has been pensioned in 2011/12 and 2012/13. This is the amount to enter in the Certificate.

- ii) If accounts are made up to a date in the second tax year, but these represent a period of less than 12 months income for the joining Practitioner, tax is charged on the profits of the first 12 months of Practitioner service. Similarly, this period will also represent the starting point for the calculation of pensionable pay.

**Example**

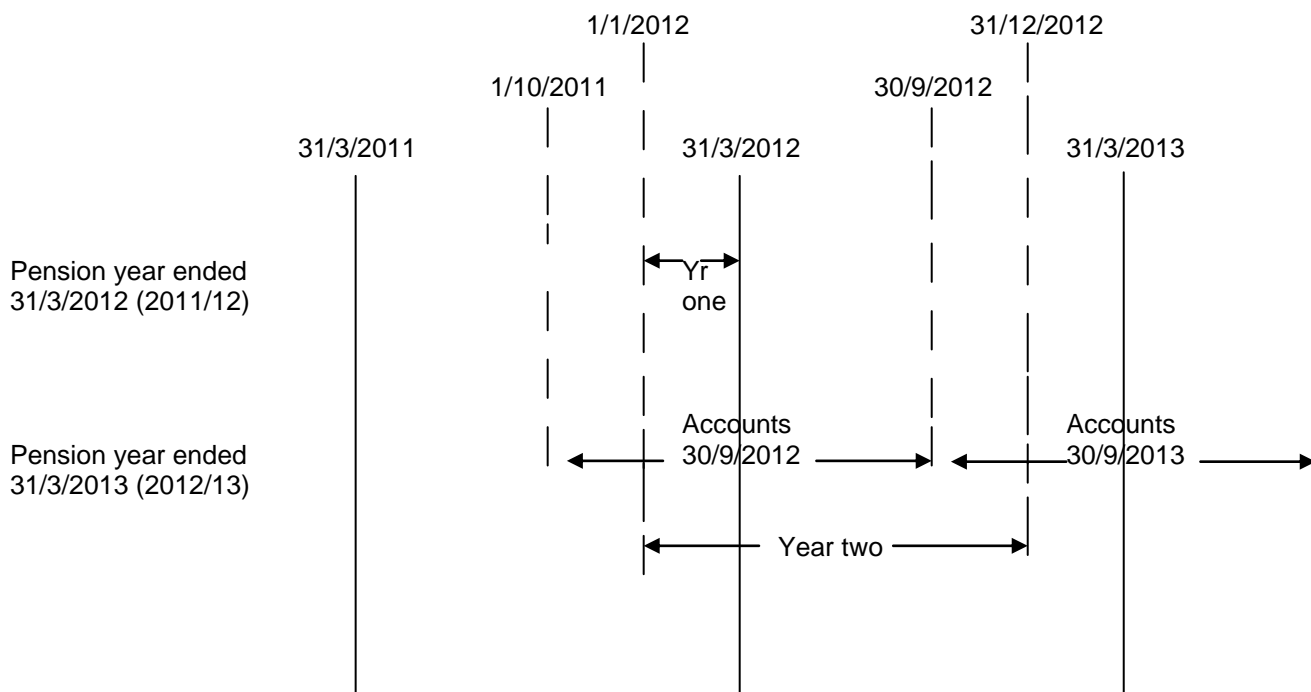
Practitioner starts 1 January 2012, in a Practice that has a usual accounting 'year end' of 30 September.

**Tax year 2011/12**

Tax on profits from commencement to following 5 April, i.e. from 1 January 2012 to 5 April 2012. This forms the basis of pensionable pay for the pension year ended 31 March 2012.

**Tax year 2012/13**

Practice accounts will be made up in this tax year to 30 September 2012. However, as the new Practitioner has only been a member since 1 January 2012, this only represents 9 months of service. The GP is therefore taxed on his first 12 months of service; being the year from 1 January 2012 to 31 December 2012. This will entail adding together the profits from the accounts to 30 September 2012 (9 months) to a proportion of the profits from the accounts for the following year ended 30 September 2013 (3 months).



Looking at the overlap situation above, it can be seen that, for ongoing partners in Practice, their pensionable pay for 2011/12 is derived from the accounts for the year ended 30 September 2011. However, the partner joining at 1 January 2012 is pensioned on the period 1 January 2012 to 31 March 2012 in 2011/12 and on the year ended 31 December 2012 in 2012/13.

The overlap pension to be carried forward from 2012/13 onwards (not 2011/12 as no double pensioning had occurred then) is therefore the amount for the period 1 January 2012 to 31 March 2012, because this has been pensioned in 2011/12 and 2012/13. This is the amount to be entered in the Certificate.

- iii) If accounts are made up to a point in the second tax year for a period of longer than 12 months, then the new Practitioner would be taxed in that year on the profits of the 12 months to the accounting end date that falls into that year.

## Example

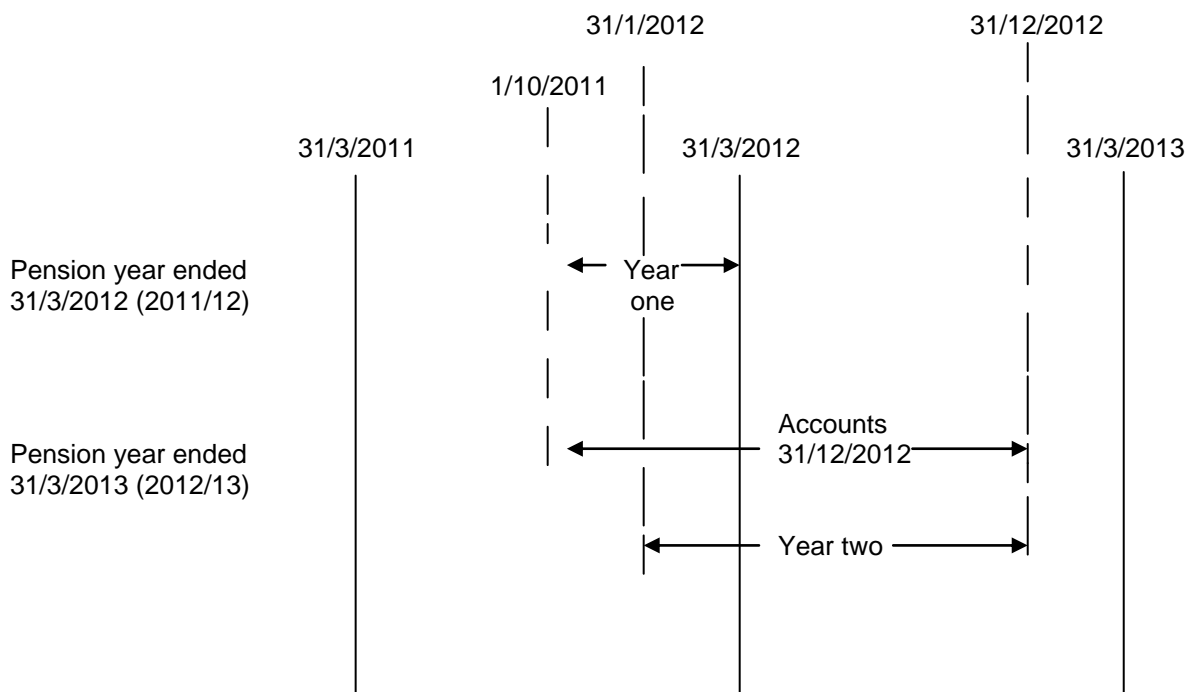
Practitioner starts 1 October 2011, in a Practice that has a usual accounting 'year end' of 30 September. However, accounts are then made up for the 15 month period from 1 October 2011 to 31 December 2012.

### Tax year 2011/12

Tax on profits from commencement to following 5 April, i.e. from 1 October 2011 to 5 April 2012. This forms the basis of pensionable pay for the pension year ended 31 March 2012.

### Tax year 2012/13

Practice accounts will be made up in this tax year to 31 December 2012. As the new Practitioner has been a member since 1 October 2011, this represents 15 months of service. The doctor is therefore taxed on the 12 months to the new accounting date; being the year from 1 January 2012 to 31 December 2012. This will entail proportioning the profits from the 15 month period to 31 December 2012.



Looking at the overlap situation above, it can be seen that the partner joining at 1 October 2011 is pensioned on the period 1 October 2011 to 31 March 2012 in 2011/12 and on the year ended 31 December 2012 in 2012/13.

The overlap pension to be carried forward from 2012/13 onwards (not 2011/12 as no double pensioning had occurred then) is therefore the amount for the period 1 January 2012 to 31 March 2012, because this has been pensioned in 2011/12 and 2012/13. This is the figure that should be entered in the Certificate.

### b) Certain changes to annual accounting dates

The tax rules for changes in accounting dates generally ensure that 12 months of profits are taxed in any one tax year, other than the years of commencement (as described above) and cessation (described below). The same is true for assessing profits for pension purposes.

- i) Where accounts are made up to a date earlier in the tax year than the previous date, then profits of the 12 months to the new date are taxed. This period will also form the basis of the pensionable income for that pension year. This will, however, result in new pension overlap being created and carried forward as there will be an amount of profit that has been pensioned twice. Please refer to the example at 2a(ii) above for details on how this works.
- ii) Where accounts are made up to a date later in the tax year than the previous date, then the profits of the whole extended period will be charged to tax less an amount of tax overlap profits to ensure that 12 months of profits only are charged to tax. The same applies to

pension overlap. In this instance, the figures used to calculate the pensionable pay in the 2011/12 Certificate up to Box 34 will reflect the longer period and pension overlap brought forward at Box 35a and will be used to reduce the pensionable period back to 12 months by entering the relevant proportion of the brought forward overlap into Box 35 to ensure that Box 36 reflects a figure for 12 months. The amount then carried forward at Box 35c will be the entry brought forward at Box 35a less that utilised in the year at Box 35.

## **Figures to be taken from more than one set of accounts**

### **1. Opening Years**

As can be seen from the above, it may be that two sets of accounts are utilised to calculate pensionable pay. The example at 2a(ii) illustrates the point. Here, the pensionable pay in the second year is calculated by taking the 9 months of the income from the accounts for the year ended 30 September 2012, plus 3/12 of the income from the accounts for the year ended 30 September 2013.

To arrive at the superannuable profit, the GP's share of adjusted medical related total income, non-NHS income and expenses should be calculated separately for each year, those ended 2012 and 2013 above. The first, for 2012, will relate to 9 months for the new GP. To each of the categories mentioned in the first sentence of this paragraph are added 3/12 of the figures from the 2013 accounts under the same categories. The aggregated figures, being 12 months, are then taken to the GP Certificate of Pensionable Pay to complete the income and expenses figures on the first two pages.

### **2. Closing year – retirement (including 24 hour retirement) and leaving.**

The final certificate, at the leaving date or retirement, will pension all eligible income to the date of leaving or retiring. This may entail a period of more than 12 months or less than 12 months depending upon the circumstances.

#### **a) Doctor retiring 31 March 2012 from a Practice with a year end of 30 September**

In the pension year prior to retirement (2010/11), the GP will have had income pensioned to the year ended 30 September 2010. Consequently, in the year of retirement, profits for the 18 month period from 1 October 2010 to 31 March 2012 are pensioned. This will entail calculating for this GP his share of adjusted total medical related income, non-NHS income and expenses for the year ended 30 September 2011 together with that for the period to 31 March 2012. These figures are then aggregated and the aggregated figures taken to the final GP Certificate of Pensionable Pay.

It may be that accounts are prepared for the 6 month period to the GP's retirement and the entries for the Certificate will be taken from the adjusted figures on those accounts. Where, however, no interim accounts are prepared, it will be necessary to time apportion the figures from the accounts for the year ended 30 September 2012 to arrive at the additions to aggregate with those for the year ended 30 September 2011.

After the calculation of the pensionable pay for this final extended period, any pension overlap brought forward will be deducted in full.

#### **b) Doctor retiring 31 May 2011 from a Practice will a year end of 31 December**

In the pension year prior to retirement (2010/11), the GP will have had income pensioned to the year ended 31 December 2010. Consequently, in the year of retirement, profits for the 5 months from 1 January 2010 to 31 May 2011 are pensioned. The GP's share of adjusted total medical related income, non-NHS income and expenses should be calculated and these figures taken to the first two pages of the GP Certificate of Pensionable Pay.

Again, it may be that accounts are prepared for the 5 month period to the GP's retirement and the entries for the Certificate will be taken from the adjusted figures on those accounts. Where, however, no interim accounts are prepared, it will be necessary to time apportion the figures from the accounts for the year ended 31 December 2011 to arrive at the figures to take to the Certificate.

After the calculation of the pensionable pay for this final shortened period, any pension overlap brought forward will be deducted in full.

## **Utilising Pension Overlap**

It has been stated that profits in respect of a Practitioner position should not be taxed more than once. When a Practitioner ceases in a position, through a change of Practice or retirement, the whole of the pension overlap generated at whatever time in respect of **that** position should be deducted from the final year's pensionable pay, but only to the extent of reducing pensionable pay to zero.

Should there be any surplus of pension overlap after the reduction of pensionable pay to zero, this is to be carried back to the previous year to reduce the pensionable pay for that period. It should be noted here that an amended Certificate of Pensionable Profits for the previous year must be submitted to the PCT/LHB for them to amend the pension record and arrange a repayment of the overpaid contributions.

In this way, it can be seen that pay in respect of a particular position is not pensioned twice. Should unused pension overlap be carried forward and set against pay from a future position, then the pensionable pay for the previous position will be overstated.

It should be noted that, where one partner of a two partner GP practice leaves, and the remaining partner continues as single-hander, this does not constitute a cessation for the purposes of utilising pension overlap. There must be an appropriate change of accounting year end date in these circumstances to enable pension overlap to be utilised.

## **24 Hour Retirement**

For pension purposes 24 hour retirement is treated as the end of membership of the NHS Pension Scheme. Pensionable profits should only be included in the Certificate for the period up to retirement.

Where the GP returns to practice following the requisite 24 hour gap and restriction in work, however, the practitioner will still be entitled to receipt of seniority payments. In determining whether a GP has the seniority abated by virtue of having a Superannuable Income Fraction of two thirds or below, however, a notional amount of pensionable pay for the period following retirement should be accounted for. It will therefore be necessary in the year of retirement for two certificates to be completed. The first will reflect actual pensionable pay up to retirement. The second will reflect pensionable pay for the entire year for the purposes of seniority. It is vital that appropriate notes are included in Box 76 to make clear the purpose of each certificate.

## **Note regarding differing accounting year ends**

It may be possible to have two different accounting 'year ends' falling within one tax year. For instance, your partnership year end falling into 2011/12 may be 30 June 2011, but your private fee self employment income is assessed on its own year end of 31 December 2011.

In these circumstances it will be necessary to apportion the pensionable pay entered at Box 38 of the 2011/12 Certificate between the partnership and the self employment income so that a separate calculation can be made for each. This is because each position will have a different period reflecting income pensioned twice. This may be achieved by apportioning the entry at box 38 by the ratio of pensionable partnership and self-employment income to total pensionable income.

The fraction can be arrived at as follows by reference to Boxes on the Certificate:

Partnership income

$$\frac{\text{Box 1 less Box 7}}{\text{Box 6 less Box 12}}$$

Self employment income

$$\frac{\text{Box 2 less Box 8}}{\text{Box 6 less Box 12}}$$

When such a split is necessary, you must use Box 76 of the 2011/12 Certificate to note down the fractions used and the split of the pensionable pay.

Should this method provide an anomalous result, you may use your own method to produce a more reasonable division. Again, full details must be given in Box 89 of the Certificate where this is done.