Twitter Thread by Dr Tony Goldstone ■

Dr Tony Goldstone ■
@goldstone_tony

Cont■

26/ If you have paid AA tax between 1995-22 it is likely your charges will be lower in 1995 than in 2015 scheme. This is because the AA rules are particularly unfair to members of 2 schemes. If your AA charges go down during any of the remedy period, you can claim a refund

27/ It does not matter if you paid cash for AA or used scheme pays, if you overpaid these charges can be refunded. If you charges go up (unlikely unless you have “MHO” status) you may have to pay back tax. There is usually a statutory limit of 4 years for paying underpaid tax.

28/ This limit of 4 yrs of underpaid tax was referenced in the consultation document ■, although the position is less clear in the full consultation response. We will need to see the final regulations to understand the implications.

2.43 Because legacy and reformed schemes have different accrual rates, for a small minority of members their decision to take different benefits for the remedy period than they have accrued hitherto could have tax implications. This is set out in more detail at Annex B. There is a usual 4-year statutory time limit for reassessing tax for previous years. Therefore in cases where a

change in benefits means an individual owes more in tax, they must pay this additional tax to HMRC for any years of the remedy period within the current tax year and the 4 full tax years preceding the point at which the choice is made. But where a change in benefits means an individual is owed money because their tax liability is lower, the government will refund the equivalent of the excess tax paid with respect to all years of the remedy period. Individuals affected will need to reassess their tax positions for each individual year of the remedy period. Any changes that impact an individual's tax position within the statutory time limit will need to be reported to HMRC. Individuals may also need evidence of their tax position for earlier years to help them access the appropriate compensation.

29/ The consultation document also stated that members who choose reformed 2015 in retirement & incurred AA charges would be "compensated". Again detail in is less clear in the full consultation response. We will need to see the final regulations to understand the implications.

Tax treatment and compensation, where relevant	• A member's tax position would be corrected within the statutory time limit to reflect their choice of benefits. • Where they owe tax, this would be recouped for the 4 tax years before their decision point. Where they have overpaid tax, the government will repay this without a time limit.	• Non-transitionally protected members' tax will be corrected, within the statutory time limits, in 2022 when they are deemed to have been in the legacy scheme. • Where tax is owed, this would be recouped for the 4 tax years before an individual's scheme benefits change. Where members have overpaid tax, the government will repay this without a time limit. • Where a member chooses reformed scheme benefits at the point of retirement, their tax position will be reassessed again. Where an AA tax charge arises from the choice, the scheme will compensate members for the charge.

30/An important area are "contingent decisions". Many members took decisions i.e. "opting out" of the scheme based on the age discrimination. @theBMA argued certain cases should automatically be compensated vs having to prove this on a "case by case" basis

31/ Government disagreed, and now cases will need to be made on a case by case basis, putting a huge burden on members and also the scheme to resolve this, with no guarantee of success. This is very disappointing and will likely form the basis of ongoing legal action

Approach

A.96 Respondents tended to agree with the position set out in the consultation document, that contingent decision cases would be given the appropriate consideration when made at scheme level. The government notes that some member representatives considered that there should be automatic reconsideration of some cases; however, government takes the view that it will not be possible for schemes to know whether members took a decision, for example to opt out of scheme membership, as a consequence of the discrimination that arose. Members will need to show that they took an action, relating to their membership of a public service pension scheme, that would have been different had it not been for the discrimination identified by the courts. The government considers that any claim will therefore need to be raised by members.

32/ Another area which was very disappointing is regarding the need for advice. Govmnt acknowledges that members affected by AA (i.e many doctors) will be particularly affected - and therefore need advice as a result of the discrimination.

2.98 The government acknowledges the points made by consultees on the complexity of correcting members' tax positions historically. Where possible, the government will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove this burden in all cases. A member's tax position is unique to their personal circumstances and they alone may hold some of the data necessary to correct some elements of their tax position, particularly regarding their AA

32/ Another area which was very disappointing is regarding the need for advice. Govmnt acknowledges that members affected by AA (i.e many doctors) will be particularly affected - and therefore need advice as a result of the discrimination.

2.98 The government acknowledges the points made by consultees on the complexity of correcting members' tax positions historically. Where possible, the government will take proportionate steps to minimise the administrative burden on members, but it will not be possible to completely remove this burden in all cases. A member's tax position is unique to their personal circumstances and they alone may hold some of the data necessary to correct some elements of their tax position, particularly regarding their AA

31

position. The government acknowledges the need to provide clear and accurate communications and information to members going through this process. However, the necessary tax corrections following the implementation of the DCU will still place an administrative burden on some individuals, particularly those affected by the annual allowance.

33/ You will recall I mentioned the "cost cap" mechanism. Previously the scheme had identified a "floor breach" ie the '15 scheme was no longer "generous enough" (due in part to disgraceful pay rises). This should have triggered a rise in benefits i.e. 1/48ths instead of 1/54ths

34/ Instead government "froze" agreed cost-cap due to McCloud & is now saying costs from the (government's illegal age discrimination) should be "member" costs in the cost-cap likely removing the "floor breach". In other words, they want YOU to pay for THEIR mistake. Disgraceful.

34/ As I said, the decision over legacy (95/08) vs reformed (15) will *not* be simple. Many factors important
●when you want to retire
●need for lump sum
●need for dependent benefits
●how long your est. to live
●AA/LTA tax between choices

DONT ASSUME LEGACY IS ALWAYS BEST

35/ We @TheBMA are actively looking if we can build tools - like the @theBMA Goldstone modeller, to help you work out your tax position in both schemes ■, and help you make the decision. Many people will still need advice. We'll keep you posted.

		2015/6	2016/7	2017/8	2018/9	2019/20	2020/21	2021/22	Total (all AA in 2015-22 remedy period)	Total (excluding 19/20 for Eligible Clinicians in England and Wales)
AA Tax liability	Transition Reformed pension	£0.00	£0.00	£10,660.66	£2,259.87	£5,666.78	£0.00	£9,382.43	£27,969.75	£22,302.96
	McCloud Legacy Pension	£0.00	£0.00	£4,481.79	£0.00	£0.00	£0.00	£0.00	£4,481.79	£4,481.79
	Difference between FT legacy and FT transition (red = negative i.e. potential refund)	£0.00	£0.00	£-6,178.87	£-2,259.87	£-5,666.78	£0.00	£-9,382.43	£-23,487.96	£-17,821.17

36/ You've probably gathered, this is not straightforward! Some things have gone our way (like “DCU”) - others will be an ongoing fight. There’s never been a better time to be part of a union. @theBMA have got your back ■

37/37

If you want to know more about pensions/"McCloud" , join me & @BMA_Pensions colleagues at one of our webinars. We've already had over 5000 people register, sign up early to avoid dissapointment.

Its free and open to all.
https://t.co/HhqdZ88c4m

Pls RT!

[END thread 2/2]

The NHS pension scheme, pension tax and the McCloud age discrimination case



Tuesday 23 February | 7pm – 8.30pm (additional dates will be added shortly due to high demand)

Join me and the deputy co-chairs of the pensions committee, Dr Tony Goldstone and Dr Krishan Aggarwal for a tour through:

– pensions basics - 1995, 2008 and 2015 schemes
– pensions taxation - annual allowance and lifetime
– legal update - how McCloud will affect your pension

Register now