

Employer Questions

1. How do you treat people who only work for you on an occasional basis e.g. daily-rated workers etc?

The tax laws are different for employees and self-employed persons, therefore it is important that you know whether the people working for you are your employees or are self-employed. Generally, if the work undertaken by the individual is integral to your business (part of your normal business activities), you control what the person does and how and where the work is done, that person is your employee. However, if you hire a self-employed contractor to do a job at your business, that contractor is not your employee. (Refer to the Employer's Guide for further assistance in working out whether someone is an employee or self-employed).

2. Why can't the monthly PAYE (TD3) sheets be amended to include gross pay and therefore be used by IRD for calculating employees' annual gross payment and tax paid?

A new monthly PAYE (TD3) is being designed that includes the gross wage for each employee in addition to the amount of PAYE deducted for the month. A change in the law will require you to complete an annual Employer Reconciliation (TD6) along with the Employee Certificate (TD5). This reconciliation process will help you to verify the accuracy of your wage records and hence the accuracy of the Employee Certificates (TD5) that you issue. The PAYE system may be further enhanced in the future so that the monthly PAYE form (TD3) can be used as a final verification of emoluments paid and PAYE deducted, however, at this time the annual employer reconciliation process is to be used by you. The employer reconciliation process will remain in place until the overall quality of information employers file with IRD improves and IRD has the technology in place to accommodate a further process change.

3. Why doesn't IRD treat apprentices different from other employees by exempting their income from tax?

Traditionally apprentices are low-income earners and therefore have a higher probability of earning income under the \$15,000 threshold, thereby not being liable to pay income tax. However, apprentices are to be treated the same as any other employees for tax purposes and if their income exceeds the exemption threshold, they will be liable to income tax in the same way as any other employee.

4. Is there a minimum period that employees must work for an employer before a TD4 is required to be filed if the employee leaves that employment?

There is no minimum period that an employee must work for you before you are required to complete a TD4 if they leave your employment. However, if you believe that an employee has not left your employment permanently, you do not need to complete a TD4. Therefore if an employee works for you periodically then you do not need to issue a TD4 every time the employee ceases working for you so long as you believe that the employee is likely to work for you again in the near future.

5. How are employees from overseas to be treated for tax purposes?

The tax laws are different for employees from overseas who are tax residents of Montserrat and those employees from overseas who are not tax residents of Montserrat. Generally employees from overseas who are permanently residing in Montserrat are to be treated the same as any other employee and have PAYE deducted. Employees who are not permanently residing in Montserrat are to have Non-Resident Withholding Tax (NRWT) deducted from their wages at the rate of 20 percent.

6. How are family members of employers to be treated for tax purposes when they work for them on an occasional basis?

If you employ a family member in your business any payment of wages or salary must be for services they provide in the course of carrying on the business and not be excessive when compared to rates you would pay any unrelated employee for doing the same work. The normal PAYE rules are to apply to these payments and you can claim the gross payment as an expense in your business accounts.

7. If IRD enforces the law making employers pay over PAYE by the due date it will have a flow on effect as employers restrict credit to their customers, therefore, will IRD be using the media to communicate this change of policy to the general public?

The employer seminars are the first component of an ongoing taxpayer education strategy IRD is implementing. Future seminars will be conducted for general business taxpayers and any other taxpayer groups that are identified. IRD also intends to extend the education programme to the general public through the local media.

8. Can the tax tables be simplified since they currently have many columns and employers are told by IRD to only use the far left hand column when calculating PAYE?

The current format of the tax tables is based on previous tax laws that permitted a higher variety of allowances to be claimed by employees. The current tax tables will be amended in due course to represent the current tax laws.

9. Should employers notify IRD when employees take temporary time off work?
There is no legal responsibility for you to notify IRD if employees leave your employment on a temporary basis. However, you may wish to advise IRD if this happens as it may circumvent you receiving an enquiry from IRD.

10. Why do the PAYE deductions increase so dramatically when an employee receives a higher wage?
The income tax structure is a “progressive tax system”, which means that the tax rate increases as income levels increase. The \$15,000 exemption threshold further compounds the net result of the progressive tax rate system.

11. What is the legal authority for tax to be deducted from government contractual payments?
Section 38 of the Income Tax Act requires that any payment made on behalf of the Government in relation to a contract is to have tax deducted at the rate of 15 percent. The tax deducted is a withholding tax and is to be credited in the following order:

- *Set off against any PAYE arrears owing by the employer;*
- *Held until the income tax assessment for the current year is completed and offset against the tax liability assessed;*
- *Any excess tax held after these offsets have been completed is to be refunded to the taxpayer.*

12. Are bonus payments taxable?
Bonus payments are included in the definition of “emolument payments” and are taxable however deducting tax from bonus payments requires special treatment. The following steps are to be followed:

Step	Action
1	Divide the total amount of the bonus by the number of pay periods in the year in which it is paid
2	The resulting amount from step 1 is to be added to the gross amount of emoluments which were payable to the employee in the pay period immediately preceding the date on which the bonus was paid
3	Use the tax tables to calculate the amount of tax which should have been deducted on the calculated aggregate amount
4	The amount of tax to be deducted from the bonus is determined by multiplying the difference between the amount of tax calculated in step 3, and the actual amount of tax deducted, by the number of pay periods in the year.

13. Does an employer have any legal responsibilities if they know an employee has a principal job with another employer?

You are required to obtain an Employee Declaration (TD1) from anyone that begins working for you unless they are resident outside of Montserrat or their principal employment is with another employer. If one of your employees has their principal employment with another employer, you must deduct tax at a rate that does not take into account any allowances. In this situation you should contact IRD for further advice.

Employment Determinations

In most cases it will be clear whether or not someone is an employee. If you answer “yes” to all or most of the following questions, the worker is probably your employee:

- Does the person have to do the work, rather than being able to hire someone else?
- Can you tell the worker what to do on the job, and when and how to do it?
- Do you pay the worker at a set rate (such as hourly, weekly, or monthly)?
- Can the worker get overtime?
- Does the person work set hours, or a given number of hours, each week or month?
- Does the person work at your premises, or at a place that you specify?
- Do you set the standards for the amount and quality of the person’s work?