## Example FAQS

**Note: the below represents the Office of the Tax Commissioner's ("OTC") responses to frequently asked questions ("FAQ's") received by the OTC since the announcement of the implementation of a progressive Payroll Tax. The below list is not exhaustive and the OTC will seek to update, clarify, and add to these FAQs as the implementation deadline approaches. Further, please note that the OTC will also be making tools available to assist taxpayers in calculating their payroll tax liabilities.**

**Question 1:**
Please provide an example of how to calculate the amount an employer should withhold from an employee's salary when a payment is made?

***Answer 1:***
*The calculation of employee portion Payroll Tax under the progressive tax system w.e.f. 1-July-2017 should be done with reference to an employee's annualized year to date earnings paid after 1-July-2017 ("Annualized Earnings") relative to the annual tax bands. This method of taxation is referred to as the "rate of pay" method in these FAQs.*

*In order to achieve this with the fewest adjustments we recommend that Annualized Earnings should be calculated by annualizing year to date recurring payments made after 1-June-2017 ("YTD"), and adding any one-off payments. This should prevent disproportionate tax withheld from employees in different periods, and reduce the risk of over/underpayment.*

*Recurring payments*
*Examples of recurring payments are salary, commissions, overtime etc. (This list is not exhaustive.)*

*One-off payments*

*Examples of one-off payments are bonuses, severance/redundancy payments, joining fees etc. (This list is not exhaustive.)*

*The Payroll Tax liability for recurring payments is calculated by grossing up the employees' YTD earnings to arrive at an estimated annual recurring earnings. The Payroll Tax due is calculated on estimated annual recurring earnings and then pro-rated back to reflect the number of months that have been worked during the year to date. The tax deducted/ paid to date is then subtracted from this amount to reflect the Payroll Tax due for the month.*

*One-off payments should not be included in the gross up of earnings, but rather added to the annualized recurring earnings. As a result, the Payroll Tax due for one-off payments is calculated at the marginal rate of tax for the excess over the annualized recurring payments. Where applicable, this is then combined with the Payroll Tax due for the recurring earnings to give a total Payroll Tax expense for the month.*

*For example:*

1) *In Month 1, Employee A earns a monthly salary of $10,000 p.m. and a commission of $5,000 (total recurring pay of $15,000). In order to calculate their tax this would be grossed up to $180,000. ($15,000 x 12) and compared to the annual bands in order to determine the rate of taxation. The taxation calculated on an annual basis will be $11,550 which is then prorated to calculate the first month's tax liability of $963 ($11,550* 1/12).*

2) *In Month 2, Employee A earns a further $10,000 and commission of $2,000 (total recurring pay in Month 2 of $12,000). The Payroll Tax calculation will be based on their year to date earnings, grossed up to a year. The taxation calculated on an annual basis will then be prorated to calculate the tax liability YTD. The amount already deducted from the employee's pay in Month 1 will be credited against the YTD tax liability, the remaining liability will be withheld from the current month's pay. i.e.*

| | |
|---|---|
| *$27,000 YTD earnings (Month 1: $15,000 + Month 2: $12,000) / 2 months X 12 =* | *$162,000* |
| *Total annual tax due based on rate of pay =* | *$10,155* |

| | |
|---|---|
| *Total YTD tax liability at the end of Month 2 ($10,155 x 2/12) =* | *$1,693* |
| *Less: amount already withheld from Month 1 payment (see Month 1 above) =* | *($963)* |
| *Amount withheld from Month 2 payment =* | *$ 730* |

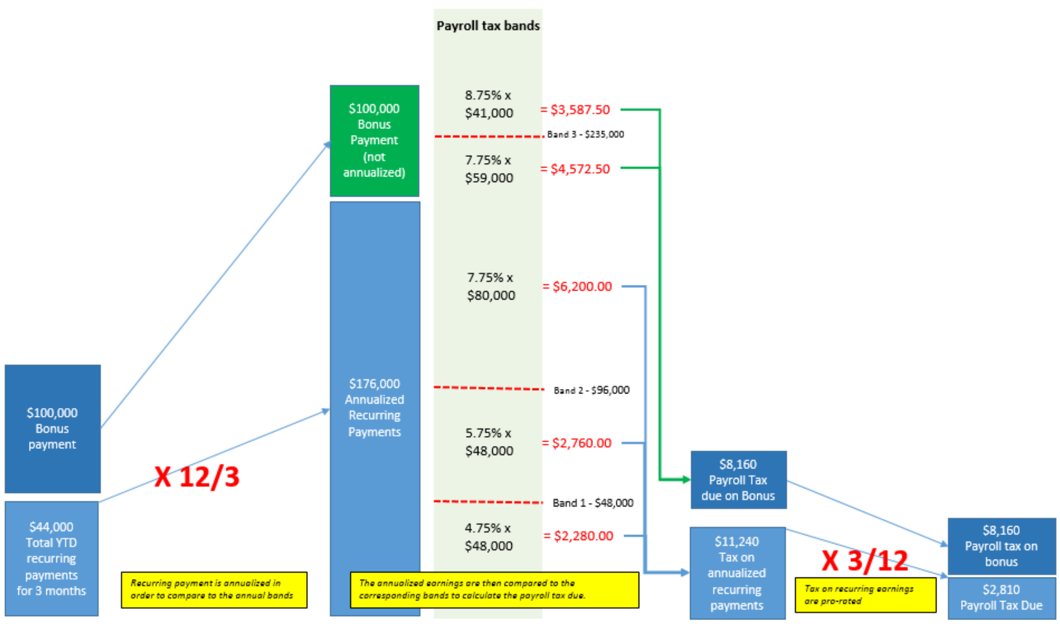
*Example continued…*

3) *During Month 3 Employee A receives their monthly salary of $10,000, commission of $7,000 and an annual bonus of $100,000.*

*The recurring payments YTD of $44,000 are grossed up to an annual amount of $176,000. The tax on the recurring payments is calculated as $11,240.*

*The bonus is not grossed up, but simply added to the $176,000 annualized recurring pay and then taxed at the applicable marginal tax rates. Therefore, $59,000 (the amount above $176,000 but below the $235,000 band limit) of the bonus will be taxed at 7.75% and the remaining $41,000 will be taxed at 8.75%. This results in tax on the bonus of $4,572.5 ($59,000 x 7.75%) + $3,857.5 ($41,000 x 8.75%) = $8,160*

***Illustration of recommended method of Payroll Tax calculation***




*The amount already deducted from the employee's pay in Month 2 will be credited against the YTD tax liability, and the remaining liability will be withheld from the current month's pay. i.e.*

| | |
|---|---|
| *Total YTD tax liability at the end of Month 3 ($8,160+$2,810) =* | *$10,970* |
| *Less: amount already withheld from Month 2 payment (see Month 2 above) =* | *($1,693)* |
| *Amount withheld from Month 3 payment =* | *$ 9,277* |

4) *During Month 4, Employee A receives their monthly salary of $10,000 and commission of $3,000.*

*The recurring payments YTD of $57,000 are grossed up to an annual amount of $171,000. The tax on the recurring payments is calculated as $10,852.50 which is then prorated to calculate the tax liability YTD of $3,617.50 ($10,852.50 x 4/12).*

*The one-time payment YTD $100,000 (the bonus received in month 3) is added to the $171,000 annualized recurring pay and then taxed at the applicable marginal tax rates. Therefore, $64,000 (the amount above $171,000 but below the $235,000 band limit) of the bonus will be taxed at 7.75% and the remaining $36,000 will be taxed at 8.75%. This results in tax on the bonus of $4,960 ($64,000 x 7.75%) + $3,150 ($36,000 x 8.75%) = $8,110*

*The amount already deducted from the employee's pay up to Month 3 will be credited against the YTD tax liability, and the remaining liability will be withheld from the current month's pay. i.e.*

| | |
|---|---|
| *Total YTD tax liability at the end of Month 4 ($8,110.00 + $3,617.50) =* | *$11,727.50* |
| *Less: amount already withheld up to Month 3 payment (see Month 3 above) =* | *($10,970.00)* |
| *Amount withheld from Month 4 payment =* | *$ 757.50* |

*The above method has been used as the basis of calculation in the tax calculators. The Office of the Tax Commissioner ("OTC") acknowledges that in absence of using the tax calculators, this is a complex calculation to be done on a monthly basis. The OTC does not prescribe this as the only method of calculation, and alternative methods could be adopted – e.g. see FAQ4 & 5 below. The OTC does however stress that the employer has a legal obligation to deduct and pay to the OTC the correct amount of the employee portion of Payroll Tax. To the extent alternative methods are used to calculate and withhold taxation from the employees' pay, this is acceptable to the OTC* ***provided it results in the same total amount of tax being paid during the fiscal year, without a significant delay in timing****. Furthermore, the OTC will not be responsible for refunds of overpayments due to incorrect calculations. In certain extenuating circumstances, e.g. see FAQ6 below, over deductions may be deducted from the overall tax liability of an employer.*

**Question 2:**
Upon termination prior to the end of the tax year, a monthly paid employee receives severance (say due to redundancy) or receives a settlement from the employer, and that amount pushes them into the highest tax band for the month; but, for the year ending 31-March-2018, the employee's total remuneration is in a lower tax band. How does the employer calculate the employee's correct amount of taxes?

***Answer 2:***
*The employee's tax liability should be calculated using the methodology described in FAQ1 above. Severance payments should be treated as one-off payments.*

**Question 3:**
A monthly employee is paid a bonus in a given month and that pushes her into a significantly higher tax bracket for the month in quarter 3, but for the year the employee ends up in a lower tax bracket, does the employer make an adjustment for the tax year and deduct less or no tax from the employee for the 4th quarter of the tax year?

***Answer 3:***
*Treating the bonus as a one off payment, and using the methodology set out in the example in FAQ1 above, will avoid any inconsistencies in the tax calculation.*

**Question 4:**
An employer decides to use an estimated average earnings for weekly paid staff to deduct the taxes since there are considerable earnings swings due to overtime. At the end of every 4 weeks or at the end of the tax quarter, the employee and the employer will make an adjustment based upon actual earnings. The employee may have to pay more tax or less at the end of the 4 weeks or at the end of the quarter. The employer may have to adjust its portion of the tax. Is this acceptable to the Tax Department?

***Answer 4:***
*Yes this is an acceptable method. However, it is noted that the taxation withheld for each employee, in total for the period of employment, should be in line with the calculation described in FAQ1. It is the employer's responsibility to calculate and pay the correct amount of taxation. Any shortfall/underpayment that is not withheld from the employee will be collectible from the employer. If there is an overpayment of taxation on an individual this can be offset against an employer's total liability in a month. However, to the extent there is employer portion to offset, the overpayment will not be refunded by the OTC.*

*In these cases the onus is on the employer to maintain clear records of the amount withheld and paid to the OTC, and such records will be subject to inspection.*

**Question 5:**
In a similar manner to FAQ3 above, the employer and the employee decide to make an adjustment at the end of the tax year and the employee may pay more or may pay less. Is this acceptable to the Tax Department?

***Answer 5:***
*Yes, provided that the correct amount of taxation is collected from the employee. It is the employer's responsibility to calculate and remit the correct amount of tax per employee. To the extent this is not recovered from the employee, the employer will still be liable for the difference.*

**Question 6:**
An employee is expected to earn $5,000 per month ($60,000 annual equivalent) and is taxed on this basis for part of the year. The employee is unfortunately affected by illness or injury and part of the year is on unpaid leave, so the employee and the employer have paid too much in tax. The employee does not return to work until after the tax year. Can the over payment by the employer and the employee be adjusted in the next tax year?

***Answer 6:***
*In these rare circumstances the employer may set off the amount overpaid during the period the employee was actually working against their total Q4 Payroll Tax payment due to the OTC and refund the employee.*

*For example if the employee only worked for the first 3 months of the year and earned $30,000, the amount of tax withheld at that date should have been $1,725 (based on the tax on annualized earnings of $120,000 pro rated for 3 months). At year end if the employee is still under the employment of the employer, but is on unpaid* *leave, their tax liability can be recalculated as $ 1,425 ($30,000 X 4.75%), and the difference of $300 can be deducted from the employer's total Payroll Tax liability for Q4 and refunded to the employee by the employer.*

*The onus of keeping records of any deductions from the total amount of tax due by the employer, and proving that the circumstances under which a deduction is made are valid, is that of the employer, and will be subject to inspection by the OTC. Please note that this is fundamentally different from the circumstance where an employee works for/is employed by an employer for a portion of the year or seasonal employees. In these circumstances the Payroll Tax liability is based on a rate of pay, and therefore no refund would be due. See FAQ7 and 8. For seasonal employees see FAQ9.*

**Question 7:**

An employee is paid commission 2 months in arrears (e.g. it was earned in May but paid in July) and each month the employee may fall in a different tax bracket and for the tax year it may end up in another. How is the tax to be calculated so that it is fair compared with a person who makes the same annual income but is paid on an even monthly basis?

***Answer 7:***
*Please see FAQ1 above. Under the proposed method of calculation the amount paid should be correct at each payment period. An alternative method of calculation such as use of an estimate is acceptable, see FAQ4, and 5 above, however, it is stressed that it is the employer's responsibility to calculate and withhold the correct amount of tax each employee for the period that they are under employment.*

**Question 8:**
Casual employees are hired at a rate of pay per hour (say $25/hour) but there is no annual set pay. In a similar manner, term employees hired for say less than 3 months are similarly affected. How does the OTC want the employer to deal with this matter?

***Answer 8:***
*Such employees are taxed on a rate-of–pay method as proposed in FAQ1 for the period that they are employed/ performing services for the employer. For example if an employee works for 3 months of the year and earns $30,000 dollars, their taxation rates are based on their annual rate of pay, $120,000 ($30,000 x 12/3)*

***Question 9:***
Employees are hired only for the summer season in hotels/restaurants/retail. How should the employer calculate the weekly taxes over the period?

***Answer 9:***
*Such employees are taxed on the rate-of-pay method as proposed in FAQ1 for the period that they are employed/ performing services for the employer. For example if an employee works for 3 months in the second quarter of the fiscal year and earns $30,000 dollars, their taxation rates are based on their annual rate of pay, $120,000 ($30,000 x 12/3).*

**Question 10:**
Can the annual tax be calculated based on a company's financial year instead of a tax year?

***Answer 10:***
*No, taxation should be calculated based on Government's fiscal year April 1 – March 31.*

**Question 11:**
What are the tax rates for the employees' portion of Payroll Tax for Fiscal Year 2017-18?

***Answer 11:***
*For April - June 2017, the employee portion of Payroll Tax is a flat rate of 6%. Effective 1-July-2017 the employee portion of Payroll Tax is to be calculated using the progressive tax rates as prescribed by the Payroll Tax Amendment Act 2017 as follows:*

| ***Annual Remuneration*** | ***Tax Rate*** |
|---|---|
| *Less than or equal to $48,000* | *4.75%* |
| *$48,001 to $96,000* | *5.75%* |
| *$96,001 to $235,000* | *7.75%* |
| *$235,001 and above* | *8.75%* |

*The maximum taxable remuneration for Fiscal Year 2017-18 is $900,000 as prescribed by the Payroll Tax Amendment Act 2017*

**Question 12:**
How does the remuneration paid to an employee from 1-April-2017 to 30-June-2017 affect the calculation under the progressive taxation starting 1-July-2017?

***Answer 12:***
*The calculation of an employee's tax liability under the progressive taxation starting 1-July-2017 is independent of the remuneration and taxes paid/deducted during April – June 2017, with the exception that the maximum taxable remuneration of $900,000 for calculation of taxes under the progressive taxation shall be reduced to the extent of remuneration paid during April - June 2017.*

*For example: For an employee who earns $100,000 per month during the 2017/18 tax year, the employee portion of the Payroll Tax will be $18,000 (calculated as 6% of $300,000) for the period from 1-Apri-2017 to 30-June-2017. In the remainder of the financial year from 1-July-2017 to 31-March-2018, the employee will be taxed, using the progressive rates, on his remuneration up to a maximum of $600,000 ($900,000 annual cap, less the $300,000 already paid from 1-April-2017 to 30-June-2017).*

**Question 13:**
What period does the term 'year-to-date' or 'YTD' used in these FAQs refer to, given that progressive taxation is only effective starting 1-July-2017 whereas the Fiscal Year starts 1-April-2017?

***Answer 13:***
*The term year-to-date or YTD used throughout these FAQs or any other guidance issued by the OTC regarding the progressive taxation refer to the period commencing 1-July-2017.*

**Question 14:**
Have there been any changes to the definition of gross remuneration taxable for the purpose of calculating the employers' portion vs employees' portion?

***Answer 14:***
*No, pursuant to the inserted definition for "'gross earnings" in relation to an employee", effective 1-April-2017 the value of group benefits incurred / borne by the employer that are not attributable to an individual employee would not be taxable for the purpose of calculation of the employee portion of the Payroll Tax. Example of such benefits (this list is not exhaustive) may include:*

- *in-house canteen facility;*
- *staff parties, lunches, and events.*

*These group benefits would continue to be taxable for calculating the employer's portion of the tax. This will be further clarified in the 2017-18 Payroll Tax Return.*

**Question 15:**
How should the employee portion of the Payroll Tax liability be calculated when the employee's YTD earnings indicate that they will earn in excess of the $900,000 annual cap? For example, an employee earns $100,000 per month ($300,000 per quarter, $1,200,000 per annum). Should this employee be taxed on:
1) $225,000 per quarter for each quarter of the year (i.e. the cap amount is prorated), or
2) their full taxable remuneration of $300,000, per quarter for each of the first 3 quarters until the taxable remuneration exceeds the annual cap of $900,000.

***Answer 15:***
*The second scenario above is correct. The employee portion of the tax should be calculated on the full $300,000 per quarter.*

*In this example the employee's portion of the Payroll Tax liability in this instance, where the employee's taxable remuneration exceeds the annual cap, would be calculated as follows:*

1) *For the months (April, May, June) in the 1st quarter the employee's portion of the Payroll Tax liability would be taxed at the flat rate of 6% each month i.e. $6,000 per month, $18,000 for Q1.*

2) *For the period starting 1-July-2017 the employee portion of the Payroll Tax liability should be calculated with reference to the annual bands, taking into account the remaining portion of the tax cap, as set out below:*

| | | |
|---|---|---|
| *A* | *Total remuneration paid during 1st quarter of 2017/18* | *$300,000* |
| *B* | *Tax cap for the remaining three quarter of 2017/18 ($900,000-$300,000)* | *$600,000* |
| *C* | *Does the sum of the following exceeds $900,000?*<br>— *1st quarter earnings of 2017/18 (A);*<br>— *expected recurring earnings for 2nd, 3rd and 4th quarter of 2017/18; and*<br>— *any one-time earnings received YTD*<br><br>*i.e. $300,000 + ($100,000 / 1 * 9) > $900,000* | *Yes* |
| *D* | *Maximum effective tax rate for last three quarter of 2017/18*<br><br>*i.e. Maximum tax / Annualized earnings where*<br><br>*-Annualized earnings are $1.2mn ($100,000 / 1 * 12) maximum up to $900,000 being the tax cap for 2017/18*<br>*-Maximum tax being the tax calculated on the Annualized earnings per the annual rates, being $74,000* | *8.22%* |
| *E* | *Maximum amount of tax for the remaining three quarters of 2017/18*<br>*i.e. (B) x (D)* | *$49,333.33* |
| *F* | *Because sum of the expected 2017/18 earnings and remuneration paid during 1st quarter 2017/18 is greater than $900,000 (C) the employee would be taxed a* ***portion*** *of the maximum amount of tax (E) based on the YTD remuneration received ($100,000/$600,000)* | *1/6th* |
| *G* | *Total tax due for each of the months of July to December, 2017 based on the employee's rate of pay*<br>*= (F) x (E) i.e. 1/6 X $49,333.33* | *$8,222.22* |

*Once the employee has exceeded the $900,000 taxable remuneration at the end of December 2017, the remaining remuneration will not be taxable.*

**Question 16:**
A company pays its directors a director fee of $10,000 every quarter? How should this payment be taxed?

***Answer 16:***
*In this case the annual rate of pay for each director is $40,000, and the employee should be taxed on each payment on this basis.*

**Question 17:**
A company pays its directors a director fee of $50,000 every year? How should this payment be taxed?

***Answer 17:***
*In this case the annual rate of pay for each director is $50,000, and the employee should be taxed on the payment on this basis.*

**Question 18:**
An employer provides certain benefits to their employees, for which it does not wish to pass on the payroll tax to the employee. For example, along with a monthly salary of $10,000 an employer provides a housing allowance of $2,000 to an employee and wishes to bear the employee's portion of the payroll tax on the housing allowance benefit. How does the employer calculate the amount of tax to withhold from the employee's monthly payment?

***Answer 18:***
*Despite how the employer chooses to share the burden of the employees' portion of the payroll tax liability, the total paid to the OTC must be based on the full taxable remuneration of $12,000. In the above case, the employer may have two options in order to calculate the split between how much is borne by the employer, and how much is borne by the employee:*

1. *Method 1: Maintain two monthly tax calculators*
    1. *First calculator which would contain the full taxable remuneration of $12,000 per month to determine total employees portion of payroll tax liability of $730 per month; and*
    2. *Second calculator which would contain only the salary earning of $10,000 per month and used to determine the amount to be withheld from the monthly payments. The amount so determined in this case is $575 per month.*

    *The first calculator (with taxable remuneration of $12,000 per month) should be used by the employer to file quarterly tax returns and payments to the OTC, whereas the second calculator is only for the purpose of determining the amount to be withheld from the employee.*

2. *Method 2: Maintain one monthly tax calculator and use proportionate method to determine the amount to be withheld from each monthly payment made to the employee. For example:*

    *Using the monthly calculator, input the full taxable remuneration if $12,000 per month, resulting in a calculation of $730 per month for the of employees portion of payroll tax liability. However since the employer wants to bear the tax burden relating to the housing allowance of $2,000 per month i.e. 16.67% of the total taxable remuneration ($2,000/$12,000) which amounts to $121.70 (16.67% x $730). The balance of $608.30 (83.33% x $730) to be withheld from the monthly payment to the employee.*

| | |
|---|---|
| *Monthly salary* | *$10,000* |
| *Housing allowance* | *$2,000* |
| *Total taxable remuneration* | *$12,000* |
| *Total monthly tax liability (using the tax tables and annual remuneration of $144,000)* | *$730* |
| *Less: amount to be paid by employer = (2,000/12,000 x $730)* | *($ 121.67)* |
| *Equals: amount to be withheld from employee* | *$608.3* |

*Note: there is a difference of $33.3 p.m. in the amount withheld from the employee under Method 1 and Method 2, in this example, however the total amount payable to the OTC for the employee portion of payroll tax of $730 is unchanged.*

*Note also that Method 2 is not built into the calculator. If you choose this method, you must use the calculator results to determine the portion of tax to be withheld from the employee based on the appropriate portion of the total taxable remuneration.*

**Question 19:**
An employer pays monthly salary to its employees but, for example, also pays bi-weekly commissions, and weekly overtime. Which calculator should such an employer use?

**Answer 19:**

*In this case the employer may have a few options (illustrative not exhaustive):*

A. *Use the monthly calculator, make no deductions from the weekly / bi-weekly payments and consider them in the monthly calculator along with the salary payments i.e. in monthly calculator for the month of July the recurring earnings would be $14,000 ($10,000 salary + ($1,000 x 4 overtime)) and the commission of $5,000 ($2,000+$3,000) as one-time earnings. Thus the resultant tax deduction for the month of July would be $1,272.50, which would be withheld from the salary payment of $10,000 and thus the net amount paid to employee would be $8,727.50 ($10,000 - $1,272.50).*
B. *Use the monthly calculator but make provisional deductions from the weekly and the bi-weekly payments. In this case the highest band applicable for the employee is expected to be Band 3 (7.75%) based on his recurring salary of $10,000 per month ($10,000 * 12 = $120,000 which falls in Band 3 $96,001-235,000), therefore the employer can provisionally withhold at the rate of 7.75% from the weekly ($4,000) and the bi-weekly ($5,000) payments i.e. 7.75% x $9,000 = $697.50 which will be set-off against the total tax liability of $1,272.50 for the month of July (as determined using the monthly tax calculator). The balance of the tax liability of $575 ($1,272.50 - $697.50) will be withheld from the monthly salary payment of $10,000 and the net amount paid to employee would be $9,425 ($10,000 - $575).*
C. *Employer could use their payroll software to mirror the tax calculation at each payment period (weekly / bi-weekly/ monthly) using the methodology laid out in these FAQs to accurately determine amount to be withheld from each payment.*