

# hotels update



Winter 2008/09

## THE TAXMAN COMETH...

HM Revenue & Customs (HMRC) try to visit every business at some stage to ensure that tax and National Insurance Contributions (NIC) are being reported and paid correctly. The hotel sector in particular has seen a recent increase in employer compliance visits from HMRC.

We have also noticed an increase in visits in this sector from the National Minimum Wage (NMW) Enforcement Team who state that their current campaign is 'to enable employers to comply with minimum wage legislation and to tackle those employers who do not.'

Many hoteliers in the Northwest are now successfully employing foreign workers, especially those from Eastern Europe. However, others are seemingly unaware of the legal requirements placed upon them to check immigration status and eligibility to work in the UK. The correct allocation of tax and National Insurance can also become increasingly complicated where employers deduct an amount from an employee for accommodation. Indeed, hotel owners should be aware that deducting an amount for accommodation could potentially put the employee's rate of pay below the national minimum wage rate.

It is essential to understand the approach HMRC officers will take should they visit your business and the level of supporting documentation they will expect to see in order to prevent unexpected and often large liabilities arising.

Moore and Smalley have a specialist team who can perform a "health check" which mirrors a visit from the taxman and will highlight any shortfall in reporting requirements and assist with supporting documentation which will reduce the time HMRC have to spend at your business.

### Which areas will be checked?

Areas investigated will include:

1. Staff tips and gratuities.
2. Self employed status such as gym instructors, DJs or chefs
3. Petty cash payments
4. Benefits in kinds such as company car and fuel
5. Mileage reimbursed above the approved HMRC rates
6. Subscriptions payments and gym memberships.
7. Home to work travel payments
8. Redundancy payments and payments in lieu of notice

For example if we look at point 2 above, if you have been paying a DJ £150 per week cash, regularly for three years it could potentially cost you £22,220. The Revenue can review cases like this for up to the previous six years, making the smallest payments add up to an unacceptable liability.

In addition and of particular importance in the current economic climate, we can suggest tax efficient methods to ease recruitment or help retain staff, other than by cash or benefits which carry additional costs to the business.

Our team can also assist with negotiating settlements following an HMRC review, minimising the tax, interest and penalties arising.



### National Minimum Wage (from 1 October 2008)

Age 22 and over: £5.73 per hour

Age 18 to 21: £4.77 per hour

Age 16 and 17: £3.53 per hour

Accommodation offset £31.22 per week (£4.46 per day)

# TIPS IN THE CATERING AND HOSPITALITY SECTOR

Tips often form a large proportion of income for restaurant and bar staff but it is often the employer who runs the risk of settling unpaid liabilities and penalties if tax (and national insurance contributions) are not properly accounted for.

HM Revenue & Customs (HMRC) has recently re-issued its guidance for employers, the main points of which are set out in this article.

## PAYE

PAYE is generally accountable on all tips. The only exception is where a customer pays a tip to an employee directly, or leaves it on the table, and the employee collects it, with no involvement of the employer. In these cases it is the employee's responsibility to declare the tips on their own tax return.

Tips are often pooled and distributed by the employer or a designated member of staff, known as the troncmaster. The troncmaster is responsible for deducting PAYE (but not NIC), and for paying it to HMRC. The employer must notify the appointment (or replacement) of the troncmaster to HMRC.

## NATIONAL INSURANCE (NIC)

NICs will not be due if one of the following conditions is met:

- The tips are not paid (directly or indirectly) by the employer to the employee and they do not represent money previously received by the employer from the customer.
- The tips are not allocated among the employees, directly or indirectly, by the employer.

Where NIC is payable, it is the responsibility of the employer, not the troncmaster, to account for it to HMRC.

Where the employer decides to distribute tips as part of the normal payroll scheme alongside other remuneration the income would form part of normal income and would therefore likely be subject to deduction of NIC as well as PAYE.

To avoid NIC deductions the troncmaster must be independent from the business ownership and be free from influence on how tips are distributed.

## NATIONAL MINIMUM WAGE (NMW)

Employees have a statutory right to the national minimum wage, irrespective of any agreement made between the employee and the employer.

Tips that do not go through the payroll do not count towards the national minimum wage.

## VAT ON TIPS AND SERVICE CHARGES

Tips are not subject to VAT.

Certain service charges are also outside the scope of VAT. The position depends on whether the customer has a genuine option over whether to pay the charge. This applies even where the service charge appears on the bill.

The important factor is the wording on the menu, which creates the contract between the customer and the restaurant. If it is clear that a service charge will be added, VAT is due. But where the service charge is described as optional, no VAT is due, even if it is added to the bill without asking the customer.

The distribution of service charges to staff has no effect on the VAT position. Where VAT is due, it should be deducted before payments are made to staff.

This article is only intended to provide an overview of a complicated and high risk area and it is essential to consult with one of our tax experts if you have any concerns in relation to this subject. Please contact a member of the leisure and tourism team or your normal contact at Moore and Smalley to discuss the matter further or arrange a consultation.

**Colin Johnson, Associate Director**

## DEFINITIONS

### Tips/ gratuity

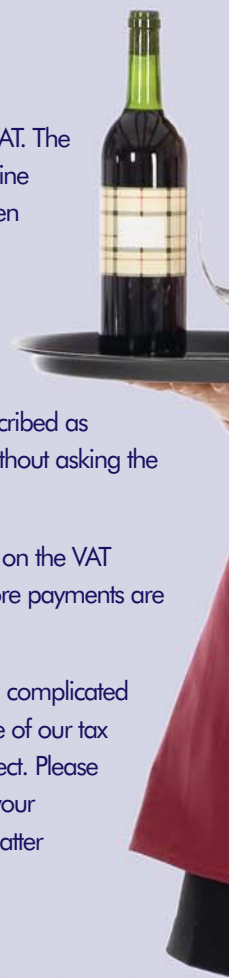
A tip is an uncalled for and spontaneous payment offered by a customer either in cash, as part of a cheque payment, or as a specific gratuity on a credit / debit card payment.

### Service Charge

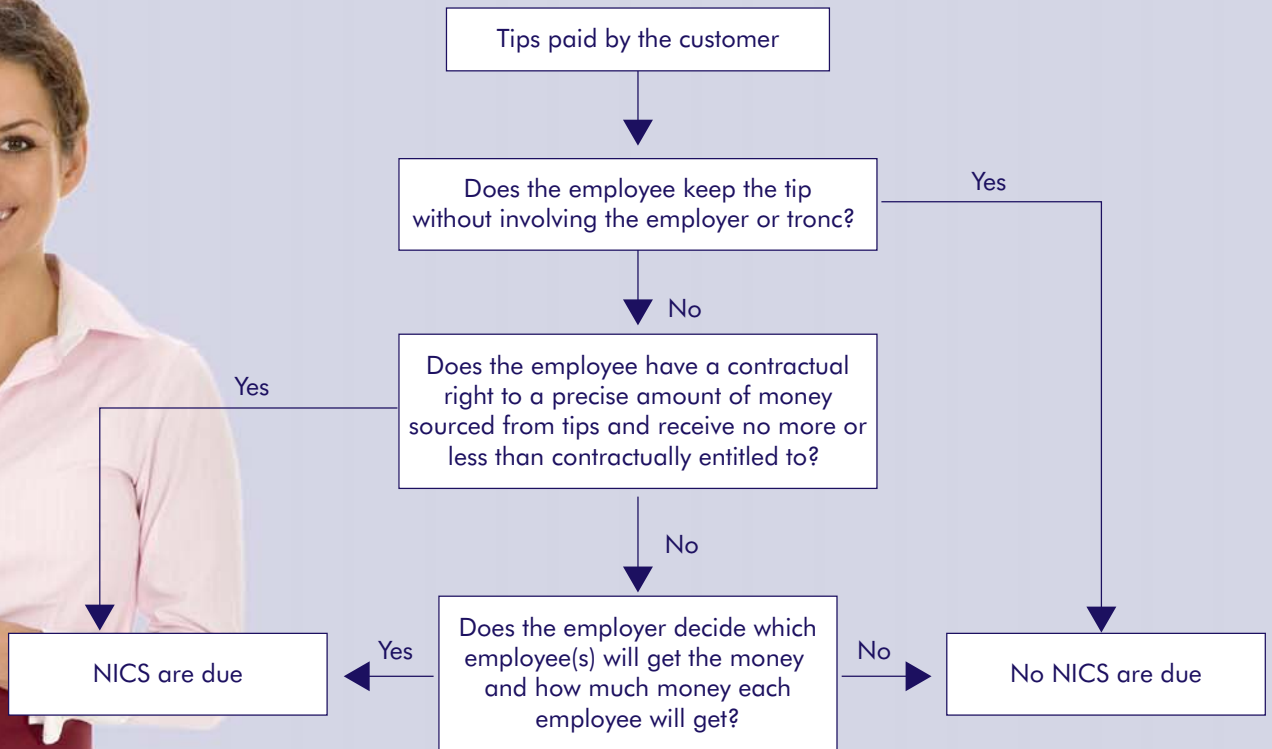
An amount added to a customer's bill before it is presented to a customer.

### Tronc

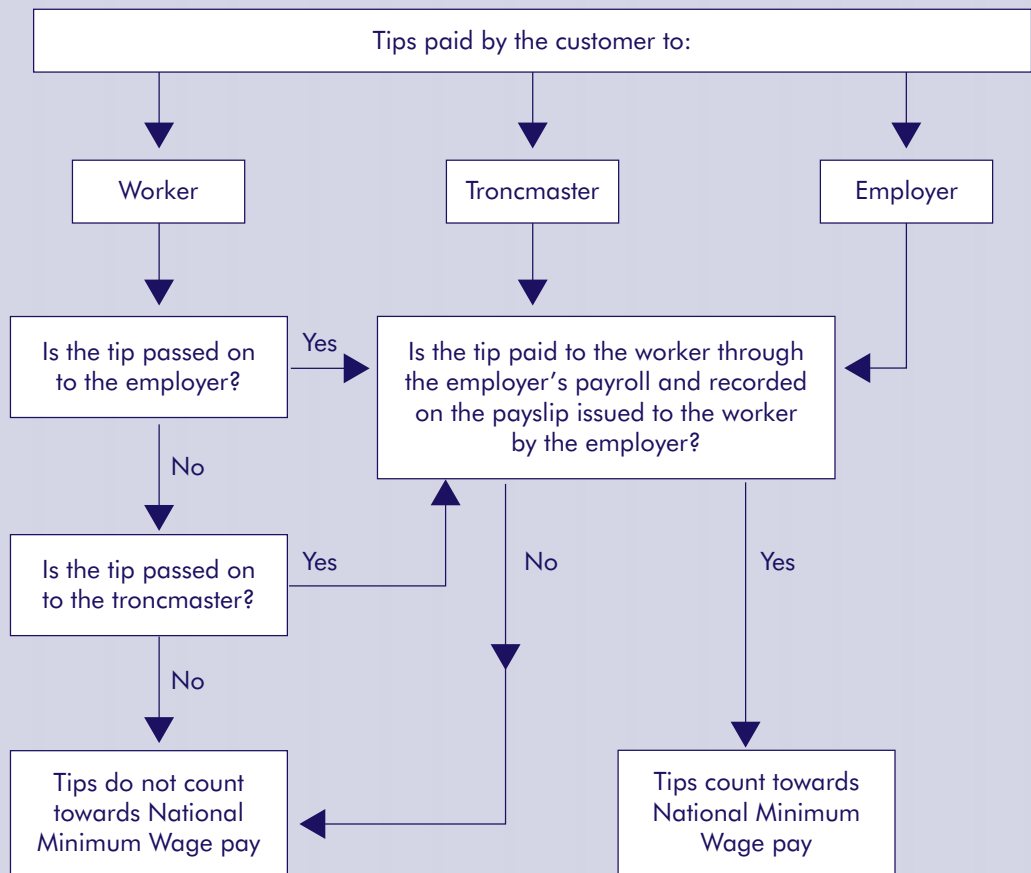
A tronc is a special pay arrangement used to distribute tips, gratuities and service charges (referred to as tips in this article).



## National Insurance contributions: treatment of tips



## Treatment of tips for National Minimum Wage purposes



# HOW WILL YOUR GUESTS REACT IF THE TV DOESN'T WORK?

On 22 July 2009 the Cumbria region will go completely digital and less than 4 months later on 4 November 2009 the Granada region will follow.

This means that any television that's not connected to a digital source when the switchover takes place, will no longer receive TV programmes. 'Digital UK' has embarked on a seven year, multimillion pound marketing campaign to help everyone get set for digital. Using mass media advertising they seek to educate the public about Digital Switchover.

However, they have neglected commercial organisations with regards to their options. With less than twelve months to go, businesses should be looking at what they have to do to make sure that they can provide viewing for employees, guests and residents.

"Care homes, hotels, schools, offices and student accommodation are just some of the properties that will be affected" commented Jonathan Dugdale, Commercial Co-ordinator

at Dugdales Digital. "We are seeing a slow increase in enquiries from businesses but expect a sudden surge six months prior to Switchover. Realistically, there are going to be many people unable to watch television unless they act sooner rather than later."

Business owners in Cumbria have begun to realise that they have to act soon.

"We are so busy, our fitters are constantly working overtime" said Anne English, Manager at Aerialek, an aerial company based in Cumbria.

"Businesses are just now realising that they have to do something. We have

won a contract to prepare all thirty nine Sheering hotels in the UK. They are prepared but there are many businesses that are not."



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