

Tax treatment of tips:

Do you operate a tronc system to handle tips? Do you use tips or gratuities to make up staff wages to the NMW? Do you exempt tips and gratuities from NIC calculations? If you have answered 'yes' to any of the above you need to ensure that your practice matches up to new guidelines from the taxman.

Tips managed and paid out through a tronc are exempt from NICs but to qualify for that exemption, the tronc must be independent. Tips managed and paid out through an employer controlled tronc or via the payroll cannot benefit from this exemption but can count towards the NMW. The problem has been that some operators have been claiming both exemptions and many have failed to realise that tips or gratuities paid through credit cards or cheques remain the property of the employer and therefore cannot be passed on to an independent tronc without incurring an NIC liability. As a result of a recent court case clarifying this point, the Inland Revenue has tightened its policy – and many prominent bar and restaurant operators have found themselves on the wrong side of it.

If you operate a tronc you must now inform the Inland Revenue of the name of the tronc master. The troncmaster is personally responsible for operating PAYE on all distributions through the tronc. If an employer, partner of the business or an official of the company performs the role of troncmaster, then the tronc will not be accepted by the Inland Revenue as such for PAYE purposes.

If you want to maintain the tronc then you must ensure that you are paying NMW through basic pay. Only money which is paid through the payroll can count towards NMW – not tips distributed through a tronc.

If you control the tronc, then you must ensure that any tips or gratuities which are paid through it have NIC deducted. Any monies which are paid directly or indirectly through the employer will be liable for NICs. This will particularly be the case if the employer pays the employee a sum equivalent to the redistribution of the tips they receive through credit card slips, if they decide how much each employee gets or if they deduct charges before passing the tips through to the tronc.

Businesses should check their current arrangements as a matter of urgency and ensure that they are not claiming the NIC exemption improperly or using tips to boost pay without deducting NICs. If retailers are found to be acting improperly – even if it is an unintentional mistake – then they may face a bill for unpaid NICs going back over 6 years.