



# tax | consultation into national minimum wage, tips and gratuities

## contact



**Anne Gregory-Jones**  
*Tax Partner*  
020 7969 5520  
agregory-jones@haysmacintyre.com

The NMW Regulations were introduced in 1999 and have acted as an important safeguard for low paid workers, but not without causing employers a few headaches.

As with much legislation there are areas which have required clarification. For example, in April 2007 the Department for Trade and Industry published guidance on the Government's interpretation of how employers should calculate the accommodation offset. Accommodation is the only benefit which may be taken into account when determining that the worker has received adequate pay.

Another key area where problems have arisen is that of tips, gratuities, service charges and tronc. Here there are two areas which have been hard fought over the last few years, resulting from HMRC's 'Operation Gourmet' and concerned the correct operation of NIC. It is now accepted by HMRC that no NIC is due where:

- Employee keeps the tip when paid directly to them by the customer with no involvement of the employer or troncmaster.

or where:

- The employee has no contractual right to a precise amount of money sourced from tips and the employer has no say in calculating how much money each employee will get. In this situation a troncmaster will organise distribution.

The second area which has caused problems is the interaction of National Minimum Wage with tips received. HMRC vehemently argued that tips should not count towards NMW, a battle they finally lost in September 2007. The Central London Employment Tribunal ruled that Revenue Inspectors had overlooked the significant fact that employees were receiving substantial amounts through the tronc, in many cases putting these individuals into the higher rate tax band.

While HMRC announced its intention to appeal the Government has also proposed changes to the legislation to stop employers counting tips as part of NMW. This would inevitably mean a rise in costs for affected businesses. A consultation process into these proposed changes has been announced. The consultation is exploring two aspects, first, whether tips, gratuities and cover charges should count towards NMW and second, how consumer understanding of tips in business can be improved.

The consultation closes on 16 February 2009. If you would like to comment you will find details on: [www.berr.gov.uk/files/file48899.PDF](http://www.berr.gov.uk/files/file48899.PDF)

haysmacintyre t 020 7969 5500  
Fairfax House f 020 7969 5600  
15 Fulwood Place  
London e [marketing@haysmacintyre.com](mailto:marketing@haysmacintyre.com)  
WC1V 6any w [www.haysmacintyre.com](http://www.haysmacintyre.com)

---

## about haysmacintyre

haysmacintyre, Chartered Accountants and tax advisers, comprises 22 partners and 160 staff based in Holborn, London. It provides high quality auditing and assurance, business and personal taxation, corporate finance, financial planning and other business support services.

Around 50% of the firm's business is within the corporate sector – small and medium sized enterprises, many of which are in the property, media and entertainment, technology, sports and business services sectors. The firm acts for a number of listed companies and assists new companies raise initial funds on the capital markets and through private equity. 30% of the firm's business is for charitable and not for profit organisations and the remainder is for professional practices and private individuals – whether senior executives, entrepreneurs or those with significant land or wealth at home or overseas.

haysmacintyre is a founding member of MSI Global Alliance (MSI), an international alliance of independent legal and accounting firms, with 250 members in 100 countries.



**Disclaimer:** This fact sheet has been produced by the partners of haysmacintyre and is for private circulation only. Whilst every care has been taken in preparation of this document, it may contain errors for which we cannot be held responsible. In the case of a specific problem, it is recommended that professional advice be sought. The material contained in this datasheet may not be reproduced in whole or in part by any means, without prior permission from haysmacintyre.