

## TIPS, TRONCS AND TAX

The Festive Season is upon us, and there is a good chance that your staff are looking forward to a few big tips from the Christmas trade. How these payments are treated will impact upon the amount that the staff can put into their pockets, and perhaps just as importantly, your personal liability to H M Revenue and Customs for tax.

Here are a few points of guidance:-

### Tips or Gratuities

These are unsolicited payments made over and above the formal bill total and may be paid either in cash or as part of a cheque or credit/debit card payment.

### Service Charge

This is a sum that is added to the customer's bill before it is presented to the customer for payment. If it is made clear that the charge is wholly discretionary with there being no obligation to pay then, depending upon the arrangements for sharing out the service charge among staff, VAT will not be applicable, and National Insurance Contributions (NIC's) will not necessarily be applicable.

If however the service charge is a compulsory part of the bill, then VAT will apply to the service charge element of the bill and also NIC's will require to be deducted when the payment is made to staff.



### Tronc

This is the special pay arrangement used to distribute tips, gratuities and service charges. The individual who operates the Tronc (usually someone other than the employer and who is known as the troncmaster) generally has personal liability for tax that is not properly deducted.

### Principles applicable to the system for handling and distributing monies received.

- In any case where the employer distributes tips or service charges, normal PAYE and NIC deductions must be applied.
- Cash tips paid directly to staff which are then retained by the individual employee without the employer being involved are not subject to VAT or PAYE

deductions. However it is the responsibility of the individual staff member to advise the Revenue of the amounts of money received. They will then usually recover tax by adjusting the employee's tax coding.

- If the troncmaster, entirely independently from the employer, is responsible for collecting allocating and paying the relevant share of unsolicited tips and service charge to the appropriate individual employees, then NIC's will not be deductible (but PAYE deductions will).

Clearly, these issues are important and the rules are not straightforward. If you are in doubt as to whether you are dealing with tips and service charges correctly it is recommended that you take proper professional advice.

### CHRISTMAS CAPTION COMPETITION



For your chance to win a bottle of champagne, can you think of a caption for this picture? Entries will be judged on their humour and originality. Send your entry by e-mail: [hospitality@achws.co.uk](mailto:hospitality@achws.co.uk) - the closing date for entries is December 31st 2007. Good luck!

# USING THE RIGHT VEHICLE?



With the start of a new year just around the corner, this might be a good time for you to take stock and review whether the legal entity you are using to operate your business is the right one for you. Here are some pros and cons of the options:

## Individual trade

A sole trader is the simplest set up and can keep its business accounts private. The price of that is that they have

unlimited personal liability for all liabilities of the business.

A business trading as a sole trader can transfer to a limited company or LLP and limit its liability for most liabilities. However, it is unlikely to be able to escape liability to the bank and probably its landlord who will doubtless demand personal guarantees.

## Partnership

A Partnership requires few formalities to set up and, like a sole trader, does not need to publish its accounts. Unless there is a clear partnership agreement the law on Partnerships will apply and may, for

example, lead to unexpected profit /capital sharing rules being applied in a dispute between partners. The Partners are taxed as self-employed individuals and bear joint and several personal liability for each other.

## Limited Company

The main advantage of using a Limited Company is limited personal liability. A Limited Company also pays a lower rate of tax than a higher rate tax payer and profits can be paid out in the form of dividends which avoids payment of national insurance.

The main disadvantage in a smaller business is the additional annual administration involved in preparing and publishing annual accounts.

The accounts will be published (and are available for public inspection) at Companies House.

## Limited Liability Partnership (LLP)

There has been an upsurge in the use of LLP's for small businesses generally. Using an LLP offers limited liability for the members without prejudicing the tax position of the business. The only obvious downside to the use of an LLP is the requirement to publish annual accounts.

To receive electronic copies of this newsletter, please email Maxine at: [hospitality@achws.co.uk](mailto:hospitality@achws.co.uk)  
Thank you

## RECENT DEALS

- Acting for the Seller of Laing's Bar. Dundee to Belhaven Brewery for a price in excess of £1M. Creevy LLH acted as agents for the seller.
- Acting in the corporate sale of a family owned Hotel business in the Borders for price in excess of £1M.
- Acting for York House Leisure in their first caravan site acquisition in Scotland.

## FORTHCOMING EVENTS

**6th December 2007** - HIT Xmas Party, Crowne Plaza Hotel, Glasgow - for more information and to book tickets, log onto [www.hitscotland.co.uk](http://www.hitscotland.co.uk)

**10 January 2008** - FREE Seminar: AC&H Licensing Update - Speaker: Janet Hood. Head of BII Scotland To pre-register, please email: [hospitality@achws.co.uk](mailto:hospitality@achws.co.uk)

**27-28th February 2008** - SLTN Hospitality Show 2008, The Highland Hall, Ingliston, Edinburgh - For more information on this event, log onto: [www.peeblesmedia.com](http://www.peeblesmedia.com)

## CONTRIBUTORS TO THIS ISSUE INCLUDE:



### Martin Bennett

Martin is an experienced commercial property lawyer and has a specific interest in the hospitality and leisure sector. He has acted for clients in the acquisition, disposal and leasing of high value premises in the licensed and leisure sectors including pubs, hotels, restaurants and caravan parks. He holds a certificate in liquor licensing and is also an affiliate member of the British Institute of Innkeeping (BII).



### Graham Reid

Graham specialises in commercial and contract litigation and employment law. With a wealth of experience gained over many years of dealing with leasing and other property disputes, licensing appeals and employment tribunals you can be sure that Graham and his litigation team will be well placed to deal with any problems that arise in the course of your business.



### Stuart Murray

Stuart has more than 10 years experience in corporate and commercial contract work for clients throughout the hotel leisure and entertainment industries and deals with sales, acquisitions and share reorganizations. He works with our clients on setting-up their businesses, banking, finance and general contract work.

ARCHIBALD CAMPBELL & HARLEY

37 Queen Street, Edinburgh EH2 1JX  
1 Park Terrace, Glasgow G3 6BY

AC&H

[www.achws.co.uk](http://www.achws.co.uk)

0131 220 3000

[enquiries@achws.co.uk](mailto:enquiries@achws.co.uk)