



RESTAURANTS
ASSOCIATION

OF IRELAND

Restaurants Association of Ireland's

Submission to

The Low Pay Commission Consultation
on National Minimum Wage
(Protection of Employee Tips) Bill 2017

About the Restaurants Association of Ireland

Founded in 1970, The Restaurants Association of Ireland is the representative body for restaurants in Ireland. With over 2,500 business owners nationwide, we represent fine dining, casual dining, family, gastro pubs, and hotel restaurants. Our member businesses include groups and chains, with the majority of members being SMEs.

Current practice regarding tipping in The Restaurants Sector

The restaurant sector makes up a very important part of Ireland's services sector, tourism and wider economy, employing approximately 72,000 workers and contributing €2bn annually to the economy. As with many parts of the services sector, tipping and the payment of gratuities and service charges is an important feature in the industry. The practice of tipping does however vary enormously.

The proposed Bill includes the definition of 'tip or other gratuity', while it also includes the concept/ payment of a service charge as falling within the proposed legislation. This is important and has implications from both the employee and employer perspective.

In the context of the payment of tips, gratuities and service charges, a key consideration is the extent to which the payment is deemed a discretionary or non-discretionary payment.

Discretionary:

Where the customer opts to gift a tip to a server, be it cash or card, generally on the assumption that the server and or other members of staff get the full amount. Discretionary (voluntary) payments made by a customer and not appearing on the bill remain outside the scope of VAT.

Non-Discretionary:

Where a service charge is added to the overall bill. This method is slightly more ambiguous as to how and who this money is given to. Service charge, where included on the bill, is regarded as part of the consideration for the meal and is liable to VAT

Upon payment of the gratuity/ service charge, practice can vary between restaurants. In some instances, the waiter or person who received the gratuity or service charge receives the full amount, in other establishments the money is pooled and distributed to all or certain staff at a later time. In other cases, some restaurants put tips towards staff parties or disburse them annually in the form of gift cards. In short it is currently at the restaurant's discretion as to how and to who it distributes tips/ gratuities service charges.

In the instances where tips are issued through the employer, then PAYE, USC and PRSI must be applied to the amount paid, including employer PRSI. If tips are received directly by the employee from patrons, there is no obligation on the employer to operate PAYE, USC and PRSI on the amounts received. Employees are obliged to declare tips received in their annual return of income. This is somewhat problematic to monitor and enforce, as most gratuities tend to be relatively small cash amounts.

The RAI has always recommended and has been informed by its members of the implementation of the TRONC systems for tips. This system and the implementation of a TRONC master has no involvement of the business owner. As it shouldn't, given the intention of the customer is that this discretionary payment is given to the employee and not to the business, so too should its management and division be solely in the hands of the employees and not the business. This allows for employees to receive a greater share of the gratuity than if it went through the business and was applicable for VAT etc.

Is there a need for legislation?

As outlined, while some anecdotal evidence exists to suggest that some businesses do not pass on tips or service charges to their employees, there is no quantitative or published data to suggest that this is a major issue.

In the UK where the practices around tipping are similar to practice in Ireland, the Department for Business Innovation & Skills, developed a Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges.

The Code provides businesses with practical guidance on how to operate in a fair and transparent way and requires operators to ensure that consumers have sufficient information to make an informed choice before they leave a tip or gratuity or pay a service charge.

The Code applies to all tipping sectors including restaurants. The guidance was developed by trade unions, business representatives and consumer groups and provides a mechanism by which individual businesses can demonstrate their intention to operate a fair tips policy. It was endorsed by relevant industry representative groups who promote it to their members. Businesses signing up to the code accept the principles in their entirety.

Conclusion

In summary, the RAI broadly welcomes efforts to provide greater transparency and consistency when it comes to the treatment of and distribution of tips or gratuities paid by customers to staff.

We would welcome a Bill calling for businesses to clarify what their tipping policy is and indeed clarifying what a non-discretionary / service charge is being used for and stating such in a prominent place, in the case of the restaurant industry, on menus. This provides the person who gives the tip with full knowledge prior to payment, and gives employer and employee alike full transparency. It would instil greater consumer confidence not just in the restaurant industry, but other industries in the service sector also.

The RAI are concerned however that efforts to introduce legislation on the matter are being predominantly informed by anecdotal evidence, with little quantitative or empirical evidence to suggest that it is a serious problem or issue for staff working in the sector.

Section 2 D(ii) of the Bill is of some concern also as it eludes to the allowance of “payment type related charges”, i.e: credit card charges. This section has been proposed despite the fact that the revised EU Payment Services Directive which banned fees on all payment cards covered by the EU Interchange Fee Regulation, that came into effect on 13th January 2018. However, many businesses outside of the restaurants sector who previously had a card charge in place prior to this regulation have now replaced it with a “service charge” or general “fee”. Also, worth noting is that such “fees” / “service charges” are now being applied to all transactions for products and services, including those paid for by use of electronic means but paid for with cash upon receipt of the goods / service.

The RAI believe that much of the language currently contained in the Bill is vague and ambiguous in parts and in its current format open to interpretation. The language does not meet the requirements of legal certainty, a core principle of legal drafting.

The RAI does not believe that enough has been done within the Bill to distinguish between discretionary and non-discretionary payments and does not believe, given the differences in terms of tax treatment, that it is practical to treat tips/ gratuities and service charges as one and the same.