

服务费课题

我国国内贸易、合作社及消费部（贸消部）于2015年4月6日宣布，商家不能在实行消费税后征收服务费。此突如其来的宣布令相关领域业者措手不及，并引发消费者、雇主和雇员之间的混淆和混乱。贸消部随后发出进一步声明，表示有与员工签订集体合约的餐饮店可向消费者征收服务费，已使坊间更加混淆。政府作此宣布前，并没有与相关领域业者进行咨询。

中总联合马来西亚酒店业者协会、

马来西亚酒店业协会、马来西亚经济型酒店协会、马来西亚零售商协会、马来西亚连锁协会、马来西亚购物中心协会，以及武吉免登暨城中城旅游协会于2015年4月18日发表文告，要求政府不要干预企业管理，也强烈的呼吁贸消部，不应在没有明显理由或可透明度和公平的改善此操作方式前，单方面的推翻和扰乱现有的操作机制。

由于工商企业界的强力反弹，在内阁的指示下，贸消部于2015年4月20日与工商团体代表召开会议，并随后于4月22日宣布，政府同意商家继续征收服务费，唯必须张贴告示，告知消费人有关征费，让消费者有所选择。

Service Charge Issue | 18-4-2015

以下为4月18日联合文告全文

Below is the Press Statement issued on 18th April 2015

作为直接参与酒店和餐饮业服务的利益相关者和团体，我们对国内贸易、合作社及消费部秘书长拿督斯里阿利雅斯于2015年4月6日的仓促宣布，即商家不能在实行消费税后征收服务费，感到无所适从。此突如其来的宣布令相关领域业者措手不及，并引发消费者、雇主和雇员之间的混淆和混乱。政府作此宣布前，并没有与相关领域业者进行咨询。

消费者可能对服务税和服务费的术语感到混淆。服务税已被消费税取而代之。服务费则是酒店、餐馆和许多餐饮店所征收的费用，在世界各地已经实行超过50年。

国内贸易、合作社及消费人事务部随即发出的进一步声明，表示有与员工签订集体合约的餐饮店可向消费者征收服务费，已使坊间更加混淆。只有非常少数已经成立职工会的餐饮店，才会与员工签订集体合约。雇主和员工目前享有的和谐关系已经严重被破坏，因为政府不经意的鼓励所有餐饮店的员工成立职工会。

没有与员工签订集体合约的餐饮店，雇佣合同一般都有注明所收取的服务费之分摊方案。分摊收取的服务费是契约责任。

雇主和员工签署的集体合约和雇佣合同，是私人机密合约，贸消部要求将这些合约展示给公众是完全错误的做法。

只要餐饮店有在餐单上清楚注明会征收服务费和所

征收的比率，消费者完全有权利选择要不要惠顾该间餐饮店。消费者不能在获得服务后拒绝缴付服务费，因为他一旦决定接受服务，便已被视为同意遵从有关服务条款。贸消部建议消费者可不必缴付服务费的说法，不论在合约法和普通法上都是错误的。

服务费的征收是一项经过时间考验，用以补贴员工收入的机制，事实上，有关数目是员工基薪以外的重要补贴。取得的服务费是与业务量比例相称的，以公平奖励付出更多努力和工作来为客户服务的员工。分担责任可促使员工建立良好的团队合作精神，同时，雇主和员工会一起努力以达致确保业务成功的共同目标。服务费的机制也鼓励并提升生产力。

在账单上列明服务费是比较透明度和清楚的做法。倘若服务费在账单上被隐藏，消费价格自然会被提高以概括服务费。服务费是营业收入，两种做法所取得的数额都是一样的。

有关单位不应该因为有雇主没有分摊服务费的案例，而利用此理由来终止有关行业的操作机制。这仅仅是个案违约问题，权利受到侵害的一方可通过许多途径来寻求解决。

原则上，政府不应该干预企业管理。

由于服务费在世界各地已被使用超过50年，我们强烈的呼吁贸消部，不应在没有明显理由或可透明度和公平的改善此操作方式前，单方面的推翻和扰乱现有的操作机制。

联合团体:

1. 马来西亚中华总商会 (中总)
2. 马来西亚酒店业者协会
3. 马来西亚酒店业协会
4. 马来西亚经济型酒店协会
5. 马来西亚零售商协会
6. 马来西亚连锁协会
7. 马来西亚购物中心协会
8. 武吉免登暨城中城旅游协会

We, as a group are all stakeholders and are directly involved in the hospitality, restaurant and F&B industries and are deeply distressed with the sudden announcement on 6th April 2015 by Datuk Seri Alias Ahmad, Secretary General, Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) that Service Charge cannot be imposed with the introduction of the GST. This abrupt announcement have caught the industry totally by surprise and have since caused total confusion and mayhem between the consumers, employees and employers alike. There was no inkling of this announcement and there was absolutely no consultation with any stakeholders whatsoever.

The consumers may have been confused between the terms Service TAX and the Service CHARGE. The Service TAX have rightfully been withdrawn and substituted by the GST. The Service CHARGE is a charge that have been imposed by Hotels, Restaurants and many other F&B outlets for the past 50 years and have been the practice worldwide.

The further statement by MDTCC that those outlets with Collective Agreements (CA) may impose Service Charge added to more confusion. Only outlets that are unionised will have CAs and are in the extreme minority. The current harmonious relation between employers and employees will be totally disrupted as the government has inadvertently appeared to have encouraged all outlets to be unionised.

Where the outlet does not have a CA, the employment contract between the employer and employee would have stipulated the sharing formulae for Service Charge collected. Sharing of the Service Charge collections is a contractual obligation.

Both the CA and employment contract are private agreements and the MDTCC's requirement to display these documents for public consumption is completely wrong.

So long the outlet have clearly stated in their menu that a Service Charge and the rate is stipulated, the customer

is totally free to choose to patronise the outlet or not to do so. The customer cannot, after having been served, refused to pay the Service Charge as he is deemed to have agreed to the terms of service once he have decided to be served. The MDTCC's advice to the consumer that he can withhold payment of the Service Charge is wrong in law of contracts and common law.

The Service Charge levy is a time-tested mechanism to supplement the employees' income and indeed, such amount can be a significant supplement to the basic salary. The Service Charge collection will commensurate and proportional to the level of business and is a fair reward for the employee who has to put in more efforts to provide the service. This shared responsibility develop both teamwork among all the employees as well as build common goals for both the employees and employer to ensure the success of the business. The Service Charge mechanism also encourages and improves productivity.

It is better that the Service Charge is being itemised in the bill for transparency and clarity. Otherwise, if the Service Charge item has to be hidden, the pricing will naturally be increased to account for this Service Charge. The Service Charge will be an expense taken from the business turnover. The quantum either way is absolutely the same.

The contention that there are incidences of employers not distributing the Service Charges do not justify as a reason to disband entirely the practice and disrupt the entire industry mode of operations. There are many avenues for aggrieved parties to seek redress as this is merely a breach of contract issue.

The principle is that the government should not interfere in the management of a business.

Since the Service Charge has been in use for more than 50 years and is a worldwide practice, we strongly call upon the MDTCC not to unilaterally upset this accepted practice for no apparent reasons nor improve any transparency and fairness to the system.

Jointly issued by:

1. The Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM)
2. Malaysian Association of Hotel Owners (MAHO)
3. Malaysian Association of Hotels (MAH)
4. Malaysia Budget Hotel Association (MyBHA)
5. Malaysia Retailers Association (MRA)
6. Malaysia Retail Chain Association (MRCA)
7. Malaysia Shopping Malls Association (PPKM)
8. BB-KLCC Tourism Association (BB-KLCC)