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Influencer Marketing and VAT

Influencer Marketing

The use of influencers has become a large part of the marketing strategy for businesses with the growth of social media. Influencer marketing is a big business with the large social media following of some influencers having global reach.

Influencers include those with large social media followings on platforms such as TikTok, Instagram etc, bloggers that are recognised experts in a certain field, and known celebrities or sports stars acting as brand ambassadors.

Influencer marketing is a particular area of focus for the Irish Revenue at present and the details of influencers income has been sent to Revenue by online platforms. Revenue issued a number of Level 1 Compliance Intervention notices to influencers in recent months to encourage voluntary compliance. In the absence of engagement Revenue will escalate the intervention to audit or investigation.

The focus of this article is the VAT consequences of income received by influencers, but it goes without saying the income generated is also liable to income tax.

Influencers and VAT

For influencers to be within the scope of VAT they must be in business and supplying goods or services for consideration. The consideration can be monetary or non-monetary, including gifts, free use of goods or services, and virtual currencies or tokens.

Influencer marketing is treated as the supply of a service by the influencer.

The threshold for VAT registration for a person supplying services in Ireland is €40,000.

In addition to marketing services many influencers generate income from other sources such as:

- Selling merchandise including t-shirts, mugs, keyrings etc online.
- Creating subscription services where subscribers pay to view content.
- Google AdSense.

VAT on Services

The VAT treatment of the service supplied by the influencer will depend on:

- The nature of the service;
- The place of business of the influencer;
- The place where the business receives the service;
- The agreement between the parties;
- The consideration provided for the service.

The general rule is that the supply of services between businesses (B2B services) is taxed at the customer's place of establishment, while services supplied to private individuals (B2C services) are taxed at the supplier's place of establishment. There are a number of exceptions to the general rule, however a marketing service is not one of these.

Example:

- If an Irish influencer supplies a B2B service to an Irish business the supply will be subject to Irish VAT and the influencer should charge VAT on the invoice.
- If an Irish influencer supplies a B2B service to a business in France the supply will be subject to French VAT. The Irish influencer should not include VAT on the invoice and the French business will self-account for the VAT due.

Influencers are often rewarded for their services by receiving free products or services such as hotel stays, meals in a restaurant, beauty products,



event tickets etc. The consideration for VAT is the market value of the item received in exchange for the influencer's services.

VAT on Goods

Where the influencer has income from the sale of merchandise the VAT treatment can depend on:

- The location of the purchaser;
- Whether the purchaser is in business or a private individual;
- The location of the merchandise at the point of sale;
- The platform used to sell the merchandise;
- The turnover from the sale of merchandise.

The VAT One Stop Shop Scheme (OSS) simplifies the VAT obligations for Irish influencers selling merchandise B2C to private consumers in the EU. It provides for a single VAT registration that can be used to account for VAT on sales across the EU.

If the B2C sale of merchandise is facilitated through an online platform, the platform is deemed to be the supplier of the merchandise and responsible for accounting for the VAT due in the following circumstances:

- the importation of goods from outside the EU in consignments of an intrinsic value not exceeding €150 and/or
- intra-EU distance sales of goods and domestic supplies of goods, regardless of the value of the goods, where the supplier is established outside of the EU.

Businesses using Influencer Marketing

VAT can also be an issue for businesses using influencers to promote goods or services, particularly when they provide influencers with their products or services with a view to getting a positive review or endorsement.

The VAT treatment will depend on whether the products given to the influencer are gifts, product samples, or consideration under a barter arrangement for marketing services.

Barter

If a business supplies products to an influencer in exchange for an endorsement on their social media platform there are two separate supplies:

- the supply of the products to the influencer, and
- the supply of marketing services from the influencer to the business.

Both the business and the influencer (if VAT registered) must account for VAT.

Gifts

For VAT purposes, a gift of a good only arises where no consideration is received by the supplier. A gift may arise where products are provided to an influencer with no obligation to promote the product.

The general rule is that if a gift is given by a business for no consideration, it is deemed to be effected for consideration in the course or furtherance of business and is liable to VAT.

A gift is not liable to VAT where (subject to certain conditions):

- the cost of the gift to the donor does not exceed €20 (excluding VAT) or
- the gift is an industrial sample.

Industrial Samples

The gift of industrial samples will not be subject to VAT if it is:

- made in reasonable quantity
- to an actual or potential customer and
- in a form not ordinarily available for sale to the public.

This applies regardless of the value of the goods.

Conclusion

As influencer marketing is now firmly in focus with Revenue both influencers and the businesses that use their services should carefully review their VAT compliance obligations.

Moore can help both influencers and businesses avoid the VAT pitfalls.

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