



HM Revenue
& Customs

Richard Bray
Charity Tax Group

cc Chris Lane
John Hemming

Sent via email

Indirect Tax Directorate

Public Bodies
Floor 9, Zone E
10 South Colonnade
London

Tel [REDACTED]

Email [REDACTED]

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Dear Mr Bray

Charity advertising online

I am writing further to my previous letter of 14 October 2019, and your request that we review the decisions given therein.

Please accept my apologies for the time taken in responding to you. As you can imagine, at this time HMRC has had other pressing issues, but we have also wanted to ensure that we have a wider understanding of the digital advertising market. We have therefore been in conversation with the Department for Digital, Culture, Media and Sport (DCMS), who are the government department responsible for advertising policy.

We have now reviewed the various scenarios set out in your previous correspondence, and wish to respond as follows:

Social media / subscription websites

Our position in respect of social media accounts and subscription websites has not changed. An advertisement that is sent to an individual's account is something that falls within the boundaries of Note (10A). In these circumstances, the person has been individually selected.

In the same way that an email sent directly to a person's inbox, and which falls within the definition of an advertisement, is excluded from the zero rate by Note (10A), advertisements sent to individual accounts are targeted at the individual and are standard-rated.

Other types of digital advertising

In our letter of 14 October 2019, we listed the following advertising types as being excluded from the zero rating, under Note (10A), because they involved the selection of an IP address. We therefore saw these as the targeting of individuals. These were the headings used by you in your technical paper of 29 May 2019. The definitions given below reiterate those set out in our October 2019 letter and which were derived from your technical paper:

- Retargeting



In this scenario the user is tracked via cookies and then those cookies can be used to find them again as they browse the internet. No personally identifiable information is used, so the advertiser knows only that a certain device has behaved in a certain way.

- Behavioural targeting

In this scenario cookies are used to identify users who have displayed an interest in an area and reaches them as they browse elsewhere on the internet.

- Demographic targeting

In your technical paper you describe this scenario as 'data from a number of sources – firstly logged in data e.g. when a user has signed up to an email provider they will likely have given info such as a DOB, and secondly on behavioural data e.g. what users are reading online.'

- Audience targeting

This scenario involves the use of demographic and behavioural data plus additional data sources. Third party data may include, for example, frequent credit card users or frequent flyers.

- Location targeting

In your technical paper you describe this scenario as the targeting of 'users based on where they are or have been. This can be done via IP address which is registered to a particular location (this can be inaccurate) or based on data collected from your mobile phone (users have to opt in to share this for each app they use).'

- Lookalike targeting

This scenario is similar to 'audience targeting', in that advertisers use cookies to identify potential new customers, by looking at the common traits and behaviours of existing customers. The advertiser then looks for more people who fit this group online and apply their adverts directly to them.

In our review of this issue we have revisited the legal advice you provided and sought advice from our own solicitors. More importantly, perhaps, we have been in conversation with the DCMS, who have provided some very useful advice.

What is clear from the legal advice we have received is that the issues can be fact-dependent and the position for one advert could be different for another. This is backed up by the advice we have received from the DCMS, which is that online advertising is a complex and constantly changing market, and advertising legislation has not always kept up with it. There is ongoing engagement between the DCMS and industry groups, including work to agree a Direct Marketing Code. There is no 'one-size-fits-all' treatment for advertisements, but the main targeting is commonly aimed at audiences in aggregate, based on collective data, rather than at individual people.

Note (10A) applies where any member of the public has been reached through the digital medium, and this was through selection by, or on behalf of, the charity. The advice from the DCMS suggests that in this situation there is an advertising market where a person's IP address simply identifies that they are among a large group of people who have been selected on account of their interests, age, etc., and does not select the person individually. In fact, what has been selected is the aggregated audience, based on the collective data – the interest, age, behaviours, etc.

In our opinion, Note (10A) applies to a more individual selection than this – advertisements targeted at browsers do not seem to be selection as envisaged by the wording of the legislation. Therefore, we see little comparison between physical advertisements, such as unsolicited mail, and digital advertising that is applied to aggregated data. Advertisements sent to email addresses are not items applied to aggregated data and are therefore caught by Note (10A).

Location targeting

In our letter of 14 October 2019, we stated that the description set out in your paper lacked detail. In considering this further we think that there are likely to be several different scenarios and the issue will be fact dependent. In considering this further we cannot see that, even with the further advice we have received, we have enough evidence to support the view that, as described, this type of advertising is eligible for the zero-rating. Currently, we still consider this type of advertising to be standard rated.

Retargeting – Behavioural targeting – Demographic targeting – Audience targeting – Lookalike targeting

We have considered all of the targeting types individually, specifically by reference to the descriptions in your technical paper of 29 May 2019, and as reiterated in our letter of 14 October 2019. As stated above, we continue to consider 'Location targeting' as being caught by Note (10A) and therefore standard rated.

However, in respect of the other five advertising types listed above, we have considered the collective advice we have more recently received, and we are now satisfied that these advertising types are not caught by Note (10A) and are eligible for the zero rate. This is because, in our opinion, these advertising processes involve the targeting of aggregated audiences and not individuals. We now understand that the use of an IP address in these circumstances is not the target.

However, this position only applies in the specific circumstances listed above, and for which you provided the details in your technical note of May 2019. I would also reiterate that there is ongoing work that is looking at the advertising industry and advertising legislation, and it is possible that with a greater understanding of the sector and the processes involved we may be prompted to look again at the issues.

In conclusion

Following advice from several sources, we are now prepared to accept that five of the advertising types listed above are not caught by Note (10A) and are eligible for the zero rate. But we continue to see 'location targeting' as caught by Note (10A) and subject to the standard rate of VAT.

We maintain our position that advertisements sent to individual social media and subscription website accounts are targeted at the individual and are standard-rated. This also applies to advertisements sent to email addresses.

We will continue to engage with the DCMS in order to gain a better understanding of the advertising sector but also to ensure that VAT legislation keeps in step with other legislative developments.

Yours sincerely

David M. Smith
Senior Policy Advisor
VAT Principles Team