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Dear Mr Lane

Charity advertising online

I am writing further to my previous letter of 11 October 2018 and in response to the further information sent to us following a meeting in February 2019.

Please accept my apologies for the time taken in responding to you. As you can imagine, at this time HMRC has other pressing issues, but we still wish to ensure that we have considered this area as fully as possible.

Whilst I hope this response clarifies HMRC's view of advertising presented via digital platforms, it is clear that there is still some uncertainty in precisely how advertising is presented and received in the digital world.

In my letter of 11 October 2018 I set out the policy on three scenarios which had been published in Revenue & Customs Brief 25/10. We have not changed the policy on these three scenarios:

- 'Natural hits': these are not supplies of advertising for the purposes of Item 8, and are therefore standard rated
- Pay-per-click adverts: these are advertisements for the purposes of Item 8, and do not involve selection by address. They are therefore zero rated
- Direct placements on third party websites: these are advertisements for the purposes of Item 8, and do not involve selection by address. They are therefore zero rated.

Social media / subscription websites

The key issue seems to be whether individuals are selected when they access a social media account or a subscribed website, and an advertisement is, effectively, waiting for them because that account has been preselected based on data held by them.

As you are aware, Note (10A) sets out that:



(10A) Neither of items 8 and 8A includes a supply where any of the members of the public (whether individuals or other persons) who are reached through the medium are selected by or on behalf of the charity.

For this purpose “selected” includes selected by address (whether postal address or telephone number, e-mail address or other address for electronic communications purposes) or at random.

The policy in respect of this note is that this should be widely interpreted. It covers, for example, direct mail and e-mails sent to ‘the occupier’ and even that addressed by inference when it is delivered to every address in a location but not individually marked. It also covers all telephone calls whether or not the person receiving the call is known to the charity even when the number is selected at random. In each of these cases, therefore, an individual (or family) or address has been specifically targeted to receive information rather than an advert being placed that may or may not reach particular members of the public.

Our understanding of how social media and subscription websites work is that an individual logs in to their personal pages. The sites use tools to apply content, including advertising, to the individual’s personal page or presence when signed in. The content is based on the individual’s likes, dislikes, interests, location, etc., associated with the address of that individual’s page, or to their presence as a signed in member of a website. In our opinion, this is selection of a recipient by an electronic address, and not the distribution of something to a wider public. Such supplies would therefore be excluded from the relief by virtue of Note (10A) and will be standard rated.

In our opinion, the individual has not made the selection themselves, but had an advertisement targeted directly at their digital address.

Retargeting

In considering how advertisements are promulgated to social media and subscription websites we also considered how adverts are targeted to individuals when they revisit particular sites.

Your previously submitted paper on how digital advertising takes place refers to this scenario as ‘retargeting’, which is described as:

Retargeting uses data collected on users when they visit a site and uses this data to reach them again. For example, a user may visit a clothing site, browse products but not purchase – this user is tracked via cookies and then those cookies can be used to find them again as they browse the internet. It is important to note here that no PII [Personally Identifiable Information] is used here, so the advertiser does not know who the individuals are, simply that that a certain device has behaved in a certain way. If you were to use a shared computer, you would likely be retargeted with items which another user has looked at, as a result of this.

For clarity, your paper explains how cookies collect and distribute information:

[Quoting the BBC website] *“When you visit a site that uses cookies for the first time, a cookie is downloaded onto your PC. The next time you visit that site, your PC checks to see if it has a cookie that is relevant (that is, one containing the site name) and sends the information contained in that cookie back to the site.*

The site then ‘knows’ that you have been there before, and in some cases, tailors what pops up on screen to take account of that fact. For instance, it can be helpful to vary content according to whether this is your first ever visit to a site – or your 71st”

Every computer is assigned an IP address – as cookies are dropped to a browser rather than to an individual, this can explain why you may see ads seemingly targeted

to other users – e.g. if you share a computer and your partner is looking at trainers online, you may see ads for trainers.

As explained above, the policy in respect of Note (10A) holds that cases where an individual, family, or address has been specifically targeted to receive information, rather than an advert being placed that may or may not reach particular members of the public, will be caught by the condition and cannot be zero rated. Your summary of how retargeting works confirms that use of a shared computer would involve an individual receiving advertisements that may be aimed at other users of that computer.

In our opinion, when an IP address is retargeted, that is selection of an electronic address, from which the user interest was generated, and is not eligible for the relief. As per the above policy, where more than one person uses the same IP address, the advertisement may be caught by Note (10A). Supplies of adverts through retargeting are therefore standard rated.

Other types of targeting

For completeness, I will also address the other types of targeting listed in your information paper.

Channel targeting

Mainly used on larger websites, in this scenario an advertiser selects a particular section of a website for their adverts to appear – i.e. the Arts page of a news website. In our opinion these are advertisements aimed at a wider audience and are eligible for the zero-rating.

Content targeting

In this scenario an advertiser chooses to have their adverts appear alongside specified content – i.e. health-related content that appears in more than one section of a site. As with ‘Channel targeting’, these advertisements are aimed at a wider audience and are eligible for the zero-rating.

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.

As with ‘retargeting’ above, the cookies will apply the data to the relevant IP address from which the user interest was generated. In our opinion this is selection of an individual using an electronic address, and therefore a standard rated supply.

Demographic targeting

Your paper provides the following explanation:

demographic targeting is based on a users’ demographics. This data comes 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.

As above with ‘Behavioural targeting’, our understanding is that the data is applied to an IP address from which the data has been generated. In such circumstances an individual is selected using an IP address, and these supplies would be standard rated.

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.

In itself, this scenario applies to a wide group of people, as opposed to individuals. However, this form of targeting appears to use data and its application in the same way as 'demographic targeting' and 'behavioural targeting', by selecting IP addresses or mobile phones, based on data generated from them.

Whilst selection of an interest group does not fall within Note (10A), selection of an individual does, and the two are not mutually exclusive. The collection of data on an interest group is only the first step; the important point in the scenario is how the data is finally used.

In our opinion, the final step involves the promulgation of an advert to intended individuals – direct contact – as opposed to a general promulgation. Therefore, we believe that such supplies are caught by Note (10A) and are standard rated supplies.

Location targeting

Your paper provides the following explanation:

location targeting targets 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)

Whilst this lacks detail, what seems to happen here is that data is generated by individuals, collected, and then relevant adverts targeted at their IP address or mobile phone. As above, this is selection of an individual via an electronic address, and standard rated.

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.

As with 'audience targeting' there appears to be an application of an advert to selected individuals via their IP addresses or mobile phones, and such supplies are standard rated.

Device targeting

Whilst a relatively uncommon scenario, this involves an advertiser choosing to reach only certain types of device. For example, where an App is not available on Android devices, the supplier may choose to not have adverts sent to users of Android devices. Similarly, if an App is only for use on mobile phones, the supplier may opt to not have adverts sent to users of PCs or iPads. Such supplies do not involve selection of an individual and are eligible for the zero rate.

Daypart targeting

This scenario involves an advertiser choosing to advertise only at specific times of day or on specific days of the week. For instance, a seller of children's toys may choose to advertise only during prime time children's television. Such supplies do not involve selection of an individual and are eligible for the zero rate.

In conclusion

Our understanding of the law is that it was written to assist with the promotion of charities to the wider public, and whilst the law remains as it is we have to treat supplies under that legal framework.

We have set out our position based on our understanding of the information so far provided. If you consider we have misunderstood some of this information, or you believe there are other facts that would better illustrate the way advertising is promulgated digitally, we would be happy to consider these.

I appreciate that this is not the response that you were hoping to receive. Nevertheless, I hope that you can see that we have given the matter proper consideration and based our thinking on the law, and its intention, as it stands.

Yours sincerely

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