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TikTok, TikTok - HMRC calling time on free gifts

As social influencers become a part of every day life, HMRC have decided to take a closer look at their tax affairs - not only income tax, but also the VAT implications. This however goes further than the influencers themselves, and any liability may actually fall onto those businesses who engage with them and provide "free" gifts in exchange for promoting their brand and products.

In HMRC's view a gift is only truly that if it is given freely with no conditions attached. If the total value given to a single individual over the course of 12 months is less than £50 these are normally ignored. Where the threshold is breached HMRC expect the business to account for the VAT on the cost price of each gift to the person concerned.

That said, HMRC do not consider the items given to influencers to be simple business gifts and take the view that the business is receiving a commercial benefit from the influencer, as they are advertising the product. For VAT purposes this arrangement falls within the rules for a 'barter transaction'. This would be the case even if there is a no formal arrangements, but rather an implied agreement between both parties.

Under the rules for a barter transaction, HMRC requires each party to apply the VAT at the correct rate to the value of their respective supplies. If both parties are VAT registered, this would typically net off to zero. However, if the influencer is not VAT registered, there will be no input tax to recover from their services to offset against the VAT due on the goods. To be clear, there would not be an expectation for the influencer to pay the cash value of the VAT, so this just falls as a cost on the business seeking their services.

Interesting times are ahead, but as the way businesses advertise and promote evolves - it is important to consider the tax implications - especially as we know the rules don't evolve at the same pace.

A statutory win for Local Authorities

HMRC recently changed their policy, and will now treat gym memberships for local authorities as a 'non-business' activity removing the need for them to pay VAT on this income. Before this, such services were automatically liable to standard rate VAT, which is why many created leisure trusts, being charitable organisations that could provide exempt sporting services.

This follows local authorities challenging the VAT treatment, with various cases heard in the First Tier and Upper Tribunals. Ultimately, they successfully argued that the leisure services were provided under a statutory framework. This is a massive victory for local authorities, and HMRC have confirmed that they can claim a one-off refund for VAT they've previously paid to HMRC.

Whilst I expect local authorities will be celebrating this VAT win, it will be interesting to see whether there is any further challenges or change in policy. For example, one of the reasons why HMRC had previously required VAT to be charged, was that they considered there to be a distortion of competition which would hurt private operators. Will this therefore leave the door open for the large commercial gyms to pursue an exemption? Time will tell.



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