Social media: the taxation of influencers and content creators

Personal tax OMB



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We explore some of the uncertainties around the taxation of influencers and content creators.

Key Points

What is the issue?

The rise of social media has given birth to a new type of taxpayer: the influencer and content creator. We consider whether they need their own tax rules and guidance.

What does it mean for me?

As this aspect of the digital economy grows, so does the need for an appropriate tax framework to ensure that all earnings are declared and taxed correctly, and appropriate allowable expenses claimed.

What can I take away?

When claiming expenses, the general rule is that an individual may not deduct expenditure in computing the profits of their trade unless it is incurred wholly and exclusively for the purposes of that trade

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The rise of social media has given birth to a new type of taxpayer: the influencer and content creator. Does this new group need their own tax rules and guidance?

To begin to understand the answer to this question, we must be clear what we mean by social media influencers and social media content creators:

- **Social media influencers:** These are people who have built a reputation for their knowledge and expertise on a specific topic. They make regular posts about that topic on their preferred social media channels.
- **Social media content creators** (who can also be influencers): These are normally individuals who create and share content intended to educate or entertain an audience across social media platforms. The internet offers several avenues for content creation, including writing blogs, sharing newsletters, uploading videos and drafting web copy.

These influencers and content creators come in all shapes and sizes, from those posting purely for pleasure to those who turn it into a successful career. This latter group leverage platforms like Instagram, YouTube, TikTok and others to build large followings of enthusiastic, engaged individuals and generate earnings through diverse income streams.

As this aspect of the digital economy grows, so does the need for an appropriate tax framework to ensure that all earnings are declared and taxed correctly, and appropriate allowable expenses claimed. To put this into context, according to Statista there will be over 64 million social media users in the UK by 2029 and also advertising spend on influencers could reach £1.4 billion (see tinyurl.com/2mxkxt5v). A Financial Times article in 2023 stated that there were over 16 million content creators in the UK alone. TikTok this year surpassed 1.5 billion worldwide users, with the greatest increase in Gen Z (those born between 1997 and 2012), who are also the highest earners on the platform.

What guidance is there?

Whilst the Competition and Markets Authority has issued advice and guidance specific to content creators and influencers in the areas of marketing and consumer protection, the same is not true of HMRC. This leaves influencers and content creators (as well as their tax agents) having to navigate a complex tax landscape, accounting for multiple income sources, navigating grey areas around deductible expenses and complying with a myriad of tax rules and regulations, both national and international.

Given that this group tend to be extremely tech savvy, it would seem that HMRC is missing a trick by not providing specific online guidance, especially given that that their tax affairs can be complex and many Gen Z earners will still be in, or only just have left full-time education, where little or no financial teaching is provided.

So, what are the issues faced by influencers and content creators that can make meeting their tax obligations so problematic, and do they really need separate guidance?

Is it trading?

The first issue that an influencer or content creator must consider is whether or not their posts (or other online activities) amount to a trade. The longstanding ‘Badges of Trade’ (as set out in HMRC’s Business Income Manual at BIM20205 et seq.) can be used to judge whether, based on the facts, the individual is trading or not.

Fortunately, for those whose online presence is more akin to a ‘hobby’, these activities can be covered by the trading allowance (see tinyurl.com/3r57awpf), which allows those individuals to earn up to £1,000 in a tax year without paying income tax or having to register as self-employed or engage with HMRC.

The rest of this article considers people who are trading as self-employed influencers or content creators earning more than £1,000 a year of gross income.

What are the income sources?

Popular influencers and content creators have thousands, sometimes millions of followers who pay close attention to their views and the products that they use. It is therefore no surprise that brands are prepared to offer big money and provide free products and services in exchange for product reviews, endorsements and posts. Income sources available to influencers and content creators can include:

- sponsored posts and brand collaborations: payments from brands for promoting products or services via their chosen platforms;
- advertising revenue: income from adverts displayed on platforms like YouTube and TikTok;
- affiliate marketing: commissions earned from promoting products with unique affiliate links;
- merchandise sales: revenue from selling branded merchandise or digital products;
- subscriptions and fan donations: income from platforms like Patreon or OnlyFans where followers pay for exclusive content; and
- event appearances and public speaking: fees for attending events or speaking engagements.

Whilst these sources of income may be straightforward to calculate, others such as gifts and non-cash ‘benefits’ are not so easy to quantify.

The principle that non-monetary receipts are taxable in full as trading income was established by the House of Lords case of *Gold Coast Selection Trust Ltd v Humphrey* [1948] 30 TC 209. This principle was ultimately enacted into Income Tax (Trading and Other Income) Act (ITTOIA) 2005 s 28A for transactions occurring on or after 16 March 2016. (See Business Income Manual BIM40051 ‘Receipts: general: whether trading income’.)

Therefore, non-cash benefits, such as free products or services received in exchange for promotion or review, must be valued and reported as trading income. This can be complex, as the fair market value must be determined and accurately recorded.

Questions also remain as to whether unreturned, unsolicited gifts where there is no agreement for endorsement, product review or recognition in a post should be treated as trading income, and further guidance in this area would be welcomed.

What expenses are deductible?

When claiming expenses, the general rule is that an individual may not deduct expenditure in computing the profits of their trade unless it is incurred *wholly and exclusively for the purposes of that trade*, as set out in ITTOIA 2005 s 34.

For influencers and content creators, some of these expenses are easy to quantify and categorise, for instance:

- equipment and technology: cameras, computers, lighting and other equipment used to create content;
- software and subscriptions: editing software, cloud storage and other digital tools;
- professional services: fees for accountants, legal advice and other professional services;
- marketing and promotion: costs of advertising, website hosting and other promotional activities; and
- home office: a portion of home-related expenses if a dedicated space is used exclusively for work.

However, because of the nature of the work that influencers undertake, the ‘wholly and exclusively’ test is not always clear to apply, and there can often be expenses which have both a business and personal element known as duality of purpose. Let us look at three such expenses.

Clothing

Considering whether clothing costs are allowable for tax purposes has always caused taxpayers problems, but this has become more acute as influencers and content creators find their physical appearance and the clothes they wear regularly judged and critiqued by their online viewers and followers.

The leading case on clothing expenses remains the 40 year old House of Lords decision in *Mallalieu v Drummond* [1983] 57 TC 330, where a barrister, Ms Mallalieu, was seeking an allowable deduction for the sombre clothing she was required to wear in the courtroom, which she argued she would not wear outside the courtroom. Her claim was rejected on the basis that her ‘wardrobe of everyday clothes’ was required for the sake of both ‘warmth and decency’. This emphasis on ‘everyday

clothes', 'warmth and decency' has proven especially important in the outcomes of subsequent cases.

In the First-tier Tribunal case of *G Daniels v HMRC* [2018] UKFTT 462, Ms Daniels, who was a self-employed exotic dancer at a London nightclub, claimed the costs of the clothing she was required to wear whilst performing on stage, arguing that she would not have chosen to wear them outside of the nightclub. The judge in that case concluded that the clothes Ms Daniels wore on stage (which were handmade and bespoke) were not 'everyday clothes'; and that as they were often 'see-through' and 'skimpy' in nature they could hardly be expected to provide any 'warmth' or 'decency'. Ms Daniels won on this aspect of her case and HMRC chose not to appeal.

Whilst the *Daniels* case will help some cases where the clothing is not part of 'an everyday wardrobe', or is a 'costume' used in a performance, in most cases the courts continue to rule on clothing along the *Mallalieu* lines.

Cosmetic surgery

A large part of an influencer and content creator's popularity is determined by the way that they look. Although this is more obvious when considering adult content creators on platforms such as OnlyFans, this still holds true for other influencers and content creators who are selling a lifestyle which others may wish to emulate.

HMRC does accept that some performers may be able to show that expenditure on cosmetic surgery has been incurred solely for professional purposes and in these circumstances, it may be allowed. The example given in the Business Income Manual at BIM50160 'Actors and other entertainers: expenses' is of a radio performer of many years' experience who starts to do TV work. The performer is advised that their irregular teeth are reducing opportunities to appear on TV. The performer consequently elects to have cosmetic dentistry. It is established as fact that the performer had been content with their appearance, and the TV work was the sole purpose of the dentistry. According to HMRC, the cost would be allowable.

Travel and accommodation

Travel expenses also need to meet the criteria of being 'wholly and exclusively' for the purpose of a trade. This can be difficult if a social media influencer is selling a lifestyle by visiting exotic locations and hip places.

If the time when they are not online is personal, should a deduction for the expense of the trip be denied, or should the expense be apportioned on a just and reasonable basis? These are questions that influencers face and on which HMRC has given no specific guidance.

Do you need to keep records?

When it comes to accounting for income and expenses, maintaining comprehensive records is vital. Good record keeping ensures that all income and expenditure is being accounted for and the records can include notes as to the rationale for including or omitting a source of income or expense. Poor record-keeping can lead to errors when completing tax returns or potential penalties for failure to maintain adequate records – and, of course, Making Tax Digital is arriving from 2026.

Is it different abroad?

With the global nature of digital platforms, influencers often work with brands and audiences from different countries, raising complex tax questions. These can range from whether the individual is tax resident in more than one country due to a second home or long-term project, to claiming double tax relief where income is taxed in two jurisdictions.

Specialist advice should be sought where influencers and content creators have an international presence.

Case studies

To illustrate these principles and the issues that need to be considered, let us consider a few hypothetical scenarios.

1. The lifestyle influencer

Helen runs a popular lifestyle blog and Instagram account. Her income sources include sponsored posts, affiliate marketing and advertising revenue from her YouTube channel. She frequently receives free products from brands.

Helen should:

- report all cash earnings from sponsored posts, affiliate commissions and advertising revenue;
- value and report free products (that she does not return) as income; and
- deduct expenses incurred wholly and exclusively for her business, such as her camera equipment, travel costs for brand events and professional editing software.

2. The tech reviewer

Emma reviews gadgets and tech products on her YouTube channel and website. Her income comes from advertising revenue, affiliate links and Patreon subscriptions. She receives high-value items for review, which she can keep. Emma should:

- declare advertising revenue, affiliate commissions and subscription income;
- report the fair market value of gadgets she keeps after reviews; and
- deduct expenses incurred wholly and exclusively for her business, including computer equipment and consumables, website hosting fees and office rent.

3. The fitness coach

David is a fitness influencer who offers online workout programmes and personalised coaching. He earns income through client subscriptions, brand partnerships and selling merchandise. David should:

- report subscription fees, sponsorship payments and merchandise sales;
- deduct costs incurred wholly and exclusively for his business, including those related to his fitness equipment and marketing expenses – and, as these are online workouts, he can also deduct computer equipment, consumables and website hosting fees.

What is HMRC doing?

HMRC’s compliance mantra is ‘Promote, Prevent, Respond’, recognising that it is more cost effective to promote good tax compliance and prevent non-compliance than to undertake expensive enquiry work. Using their one-to-many letters, HMRC educates taxpayers of their tax obligations, and this has included in

February 2023 writing to 2,300 content creators who earn a living from non-content creation sources to query whether their declared tax is correct and that any free gifts they receive because of their online presence had been included.

Where HMRC considers there is non-compliance, it will respond and have powers to charge penalties for failures to notify liabilities and errors in submitted tax returns, together with penalties for returns which have been filed or payments made late. There are also penalties for not keeping adequate accounting records.

Conclusion

New online platforms and monetisation methods continue to emerge, providing greater and varied sources of earning potential. Navigating the tax landscape will continue to be challenging for influencers and content creators, but understanding the basics is crucial for both tax compliance and financial success. From accurately reporting income and valuing non-cash benefits to claiming legitimate expenses and understanding the international tax implications, influencers, content creators and their agents must take a proactive approach to satisfying their tax obligations.

Whilst HMRC is keen to promote ‘upstream’ education to taxpayers, there is more that could be done around the ‘grey’ areas to assist influencers and content creators in their tax reporting. They may not need their own guidance, but showing how existing guidance impacts the work they do would be a step in the right direction.

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