

## Product Ruling – BR Prd 22/02

This is a product ruling made under s 91F of the Tax Administration Act 1994.

### Name of person who applied for the Ruling

This Ruling has been applied for by Ovato Residential Distribution NZ Limited (Ovato Residential).

### Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of:

- ss DA 2, RA 5, RD 5, RD 7 and RD 8;
- s 6 of the Goods and Services Tax Act 1985 (GST Act).

### The Arrangement to which this Ruling applies

The Arrangement is the engagement of Supervisors by Ovato Residential under an Independent Contractor Contract (the Contract) to provide certain supervisory services in relation to the delivery of unaddressed mail such as free newsletters, community newspapers, magazines, directories, circulars and samples and other similar items to households and other premises throughout New Zealand.

Further details of the Arrangement are set out in the paragraphs below.

- 1) Ovato Residential is in the business of distributing unaddressed mail such as newsletters, newspapers, circulars, flyers, mailers, catalogues, pamphlets and other similar items to households and other premises throughout New Zealand.
- 2) Supervisors are people who are contracted or are to be contracted by Ovato Residential to provide certain supervisory services in relation to the delivery of unaddressed mail in New Zealand.
- 3) Ovato Residential also contracts with Deliverers, although they are not technically parties to the Arrangement. Deliverers are people who physically deliver the unaddressed mail from drop-off locations to households and other premises throughout New Zealand.

- 4) Ovato Residential distributes only unaddressed mail. Ovato Residential is not registered as a “postal operator” under the Postal Services Act 1998, as it is not involved in the carriage of “letters” (as defined in s 2 of the Postal Services Act 1998) or addressed mail.
- 5) The Contract contains the following defined terms and their meanings.
  - “Contractor” means the same as “Supervisor”.
  - “Distributor” means the deliverer who physically delivers the unaddressed mail and this term is equivalent to and interchangeable with the term “Deliverer”.
  - “Manual” means the Supervisor’s Instructions published by Ovato Residential.
- 6) Ovato Residential provides a Manual to the Supervisors that contains the Supervisor’s Instructions published by Ovato Residential. This does not, however, affect the nature of the contractual relationship between Ovato Residential and the Supervisors.

### **Main terms of the Contract**

- 7) Under the heading “The Services”, the Contract requires the Supervisor to:
  - Ensure all unaddressed mails are delivered to households in accordance with Ovato Residential’s instructions.
  - Be aware that Ovato Residential may vary the volume of deliveries or make changes in areas serviced by the Supervisor.
  - Be responsible for the appointment of Deliverers.
  - Oversee the delivery of material by contracted Deliverers in a defined area and to complete related tasks.
  - Not pay Deliverers directly.
  - Familiarise themselves with, and fully comply with, the Manual (and any amendments) and any applicable legislation, including that related to tax and health and safety.
- 8) Under the heading “Payment”, the Contract states that Ovato Residential shall pay the Supervisor for services rendered. The basis for calculating the payment is the quantity for each job, as shown on the Supervisor’s worksheet (or contractor invoice inquiry) for the Deliverers supervised by the Supervisor. Schedule 2 specifies the fees Ovato Residential is to pay the Supervisor.
- 9) All payments the Supervisor receives are gross payments. The Supervisor is solely responsible for their own Accident Compensation Corporation levies, income tax

liabilities and GST liability, or any other income-related payments that may be legislated for in the future. As the contractor is not an employee, the contractor expressly acknowledges that they shall not be entitled to any employment-related payments or benefits.

- 10) Under the heading "Motor Vehicle, Telephone, Office and Storage Facilities", the Contract states that the Supervisor is responsible for providing their own equipment (such as personal office supplies, a telephone, a vehicle, and wet weather gear) at their own expense. The Supervisor is also responsible for ensuring that such equipment is well maintained, safe and fit for purpose. The Supervisor will be responsible for all costs and services incurred in providing the services.
- 11) Under the heading "Liability and Claims", the Contract states that the Supervisor shall be responsible for all errors, omissions, loss or damage that are their responsibility as established by standards of service and compliance with the Manual as Ovato Residential requires. This means that Ovato Residential will not be liable to the Supervisor for any loss or damage resulting from the Supervisor's deliberate actions or negligence or where there is a breach of any term of the Contract, including the Manual.
- 12) The Supervisor must take out an insurance to indemnify Ovato Residential against any damage or loss arising from the Supervisor's actions or relating to the services that the Supervisor will provide.
- 13) Under the heading "Relief Supervisor", the Contract states that the Supervisor shall appoint a Relief Supervisor to temporarily undertake the obligations of the Supervisor if the Supervisor is unable to work due to illness or temporary absence. An appointment of a Relief Supervisor by the Supervisor must have written approval from by Ovato Residential. The Supervisor is solely responsible for payment and all other obligations to others who help them in this way.
- 14) Under the heading "Termination", the Contract states that either party may terminate the Contract by giving the other party one month's notice in writing. Furthermore, Ovato Residential may terminate the Contract immediately if there has been a serious breach.
- 15) Under the heading "Relationship", the parties acknowledge that the Supervisor is an independent contracting party and not an agent or employee of Ovato Residential.
- 16) Under the heading "General", the Contract provides a process of resolving any dispute or conflict that arises.
- 17) The Contract includes two schedules:

- Schedule 1 contains the personal information of the Supervisor contracted by Ovato Residential.
  - Schedule 2 specifies the Supervisor's rates of payment based on quantities and weights of items.
- 18) The Contract will remain materially the same as the version provided to Inland Revenue on 22 November 2021.

## How the Taxation Laws apply to the Arrangement

Taxation Laws apply to the Arrangement as follows:

- (a) For the purposes of the "PAYE rules", payments Ovato Residential makes to a Supervisor under the Contract will not be "salary or wages", or "extra pay", or a "schedular payment" within the meaning of those terms as defined in ss RD 5, RD 7 and RD 8 of the Act respectively.
- (b) For the purposes of s DA 2(4) of the Act, any payment Ovato Residential makes to a Supervisor under the Contract will not constitute "income from employment".
- (c) Under s RA 5(1)(a) of the Act, Ovato Residential is not required to withhold tax from payments it makes to a Supervisor under the Contract.
- (d) For the purposes of the GST Act, s 6(3)(b) will not exclude the provision of services by any Supervisor under the Contract from the definition of "taxable activity" in s 6(1).

## The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 December 2017 and ending on 30 June 2024.

This Ruling is signed by me on the 21st day of February 2022

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**Graham Poppelwell**  
Group Lead

## About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.