

PRODUCT RULING – BR PRD 16/11

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

Name of the Person who applied for the Ruling

This Ruling has been applied for by Reach Media New Zealand Limited (Reach Media).

Taxation Laws

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

This Ruling applies in respect of ss DA 2(4), RD 5, RD 7 and RD 8 of the Act and s 6(3)(b) of the Goods and Services Tax Act 1985.

The Arrangement to which this Ruling applies

The Arrangement is the engagement of people (Distributors) by Reach Media under a standard form contract, "Contract for Services – Distribution Contractor" (Distribution Contract or Contract), to physically deliver unaddressed mail (including newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other similar items) (Unaddressed Mail), from drop-off locations to households and other premises throughout New Zealand.

Further details of the Arrangement are set out below.

Parties to the Arrangement

1. The Parties to the Arrangement are as follows:
 - Reach Media – a company incorporated in New Zealand under the Companies Act 1993 that is currently owned equally by New Zealand Post Limited and Salmat International Pty Limited. Reach Media carries on the

business of distributing and delivering Unaddressed Mail to households and other premises throughout New Zealand.

- Distributors – people who physically deliver Unaddressed Mail from the drop-off locations to households and other premises throughout New Zealand.
2. Although not technically parties to the Arrangement, Reach Media also contracts with:
 - Supervisors – people who oversee the delivery of Unaddressed Mail by Distributors in a defined area and complete related tasks; and
 - Drivers – people who use their own vehicles to transport Unaddressed Mail from Reach Media's premises to a series of predetermined drop-off locations.
 3. Reach Media distributes and delivers only Unaddressed Mail. Reach Media is not **involved in the carriage of "letters" (as defined in s 2 of the Postal Services Act 1998)** or addressed mail. The Distributors will not be delivering any item that requires Reach Media to be registered as a **"postal operator"** under the Postal Services Act 1998 (Postal Operator). Reach Media was registered as a Postal Operator, but has subsequently been deregistered.
 4. Reach Media is currently run by a management team based in Auckland with processing branches throughout the country. Unaddressed Mail is delivered by a network of Distributors, Drivers and Supervisors.
 5. Reach Media's processes and systems align with industry practice. The industry uses a delivery model of supervisors who co-ordinate the activities of a team of distributors. Drivers, Distributors and Supervisors are paid on a "piece-rate basis" under contracts for services (ie, as independent contractors).

Distribution Contract

6. Distributors are engaged under a standard form contract (Distribution Contract) to physically deliver Unaddressed Mail from drop-off locations to households and other premises throughout New Zealand.
7. Distributors agree that in providing the services under the Distribution Contract, (Services) they must also read and comply with the procedures set out in Reach **Media's** online operational manual (Operational Manual). The Operational Manual does not replace or override any of the material terms of the Distribution Contract, and it does not affect the nature of the contractual relationship between Reach Media and the Distributors.
8. Specific procedural details referred to in the Distribution Contract and the Operational Manual are also provided in specific delivery instructions given to Distributors before each job (Delivery Instructions). These Delivery Instructions contain information on the particular product being delivered. The Delivery Instructions also provide information to Distributors about any changes that Reach Media has made to the Operational Manual.
9. The Distribution Contract will remain materially the same as the version provided to Inland Revenue on 24 June 2016.

10. The main terms of the Distribution Contract are summarised below.

Deliveries

11. The Distribution Contract states that the Distributor agrees to:

- deliver all the Unaddressed Mail received by the Distributor from Reach Media to the letter boxes in the Distributor's round within the timeframes (Delivery Window) communicated by Reach Media in the Delivery Instructions (exactly when each Distributor completes the deliveries within **the Delivery Window is at the Distributor's discretion**);
- make all deliveries in accordance with the delivery guidelines in the Operational Manual (which may be amended by Reach Media from time to time);
- **ensure that any other commitments do not affect the Distributor's** obligations to Reach Media; and
- familiarise themselves with and fully comply with the Operational Manual (and any amendments) and applicable legislation, including that related to tax and health and safety.

Payment

12. The Distribution Contract states the following in relation to payment:

- The Distributor will be paid for performing the Services at the rates set out in Schedule 2 of the Distribution Contract. (Rates are determined by the volume of the Unaddressed Mail deliveries.)
- These fees are the only amounts payable to the Distributor in respect of the Services and are inclusive of all taxes (except GST) and other duties or levies.
- **Payment will be made by direct credit into the Distributor's bank account** fortnightly on a Thursday.
- **Reach Media will provide a "buyer-created invoice" to Distributors within** seven days of payment or before payment if an email address has been supplied by the Distributor. The Contract explains that this means Reach Media will create the invoice and send it to the Distributor. The Distributor must not send any invoice to Reach Media.

13. Schedule 1 of the Distribution Contract requires Distributors to provide their personal details, bank details and, if they are GST registered, their IRD number.

Delivery equipment

14. The Distribution Contract states that the Distributors are responsible for providing, at their own expense, their own delivery equipment (such as bags, vehicles, footwear, reflective or high-visibility clothing, and wet weather gear). The Distributors are also responsible for ensuring any such equipment is well maintained, safe and fit for its purpose.

Taxation

15. The Distribution Contract states the following in relation to taxation:
- Distributors are responsible for paying their own taxes, duties and levies (including income tax, GST and Accident Compensation levies, if applicable), and any other income-related payments or deductions that may be legislated from time to time.
 - The Distributors will register for GST with Inland Revenue if required to do so and will advise Reach Media that they are GST registered. Reach Media will then provide them with a buyer-created tax invoice. Distributors must not send a GST tax invoice to Reach Media.

Termination of the Distribution Contract

16. The Distribution Contract states that Reach Media or the Distributors may terminate the Distribution **Contract for any reason by giving two weeks' notice in writing**. However, Reach Media may terminate the Distribution Contract immediately without notice, if the Distributor is in serious breach of the Distribution Contract or the Operational Manual (and any amendments).

Status of contractor

17. The Distribution Contract states the following in relation to the contractor status of Distributors:
- The Distributor is engaged by Reach Media under a contract for services, which means they are an independent contractor. The Distribution Contract does not create an employment relationship between the Distributor and Reach Media.
 - The Distributor is free to accept other engagements or work while they are contracted by Reach Media.

Liability

18. The Distribution Contract states that the Distributor will undertake the Services at their own risk. This means Reach Media will not be liable to the Distributor (or **any other person**) for **any loss resulting from the Distributor's deliberate actions or negligence** or where they breach any terms of the Distribution Contract or the Operational Manual (and any amendments).

Delivery options

19. The Distribution Contract states the following in relation to delivery options:
- **It is the Distributor's responsibility to carry out the Services as required** under the Distribution Contract.
 - If the Distributor is sick or unable to carry out the Services, then they need to arrange for someone else to do so. When they do this, the Distributor is responsible for any payment and all other obligations to others who assist them in this way.

- If the Distributor is unable to meet their contractual obligations to ensure the Unaddressed Mail is delivered within the Delivery Window, they must notify their Delivery Supervisor immediately.

Frequency of deliveries

20. The Distribution Contract states that Reach Media does not guarantee any minimum amount of deliveries because the volume of Unaddressed Mail available for distribution will vary, depending on the time of year and the requirements of **Reach Media's clients**.

Operational Manual

21. The Operational Manual provides guidance and helpful information for **Reach Media's contractors on the completion of their duties under the** Distribution Contract. Reach Media may amend the Operational Manual at any time, and amendments will be identified to Distributors when they receive their Delivery Instructions. The Operational Manual is divided into two sections, the first of which is applicable only to Distributors.
22. Section One of the Operational Manual covers:
 - the role of the Delivery Supervisor;
 - understanding the round map;
 - receiving the Unaddressed Mail for delivery;
 - understanding the Delivery Instructions;
 - preparing and delivering Unaddressed Mail;
 - confirming delivery;
 - health and safety matters;
 - understanding the fortnightly invoice; and
 - important things Distributors should do and not do when carrying out their obligations under the Distribution Contract.
23. Section Two of the Operational Manual is applicable to all of Reach Media's contractors and provides that Distributors and their families may be ineligible to enter competitions advertised in Unaddressed Mail delivered by Distributors.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) For the purposes of the PAYE rules, any payment made to a Distributor by Reach Media under the Distribution **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.
- b) For the purpose of s DA 2(4), any payment made to a Distributor by Reach Media under the Distribution **Contract will not be "income from employment"**.

- c) For the purposes of the Goods and Services Tax Act 1985, the provision of services by any Distributor under the Distribution Contract will not be excluded **from the definition of "taxable activity"** (as defined in s 6 of the Goods and Services Tax Act 1985) by s 6(3)(b) of the Goods and Services Tax Act 1985.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 July 2016 and ending on 30 June 2021.

This Ruling is signed by me on the 1st day of December 2016.

Howard Davis

Director (Taxpayer Rulings)