

PRODUCT RULING – BR PRD 16/12

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 (Drivers) by Reach Media under a standard form contract, "Contract for Services to Perform Driver Delivery Services of **Unaddressed Mail**" (**Driver Delivery Contract or Contract**), to transport unaddressed mail (including newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other similar items) (Unaddressed Mail) from **Reach Media's premises to predetermined drop-off locations**.

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.
- Drivers – people who use their own vehicles to transport Unaddressed Mail from Reach Media’s **premises to a series of predetermined** drop-off locations.
2. Although not technically parties to the Arrangement, Reach Media also contracts with:
 - Distributors – people who physically deliver Unaddressed Mail from the drop-off locations to households and other premises throughout New Zealand; and
 - Supervisors – people who oversee the delivery of Unaddressed Mail by Distributors in a defined area and complete related tasks.
 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. Drivers will not carry 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. The Drivers, Distributors and **Supervisors are paid on a “piece-rate”** basis under contracts for services (ie, as independent contractors).

Driver Delivery Contract

6. Drivers are engaged under a standard form contract (Driver Delivery Contract) to transport Unaddressed Mail from Reach Media’s **premises to** several predetermined drop-off locations.
7. Drivers agree that in providing the services under the Driver Delivery 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 Driver Delivery Contract, and it does not affect the nature of the contractual relationship between Reach Media and the Drivers.
8. Specific procedural details referred to in the Driver Delivery Contract are also provided in specific delivery instructions given to Drivers before each job (Delivery Instructions). These Delivery Instructions contain information on the particular product being delivered. The Delivery Instructions also provide information to Drivers about any changes Reach Media has made to the Operational Manual.
9. The Driver Delivery Contract will remain materially the same as the version provided to Inland Revenue on 24 June 2016.

10. The main terms of the Driver Delivery Contract are summarised below.

Services

11. The Driver Delivery Contract states that Drivers must complete the Services that are set out in Schedule 1 of the Driver Delivery Contract. In completing the Services, Drivers will:

- ensure their other business commitments do not affect their obligations to Reach Media; and
- familiarise themselves and fully comply with the Operational Manual (which may be amended by Reach Media from time to time) and any applicable legislation including that related to tax and health and safety.

12. Schedule 1 of the Driver Delivery Contract states that the Services to be performed are the:

- collection of Unaddressed Mail plus Delivery Notifications for drop off to a **defined set of Distributors from one of Reach Media's nominated premises on** the day before the commencement of the Delivery Window;
- physical delivery of Unaddressed Mail to be delivered by Distributors to nominated individual Distributor drop-off points in the quantities specified in the Delivery Notifications; and
- physical return of any surplus stock to the nominated Reach Media processing site.

Equipment

13. The Driver Delivery Contract states that Drivers are responsible for providing, at their own expense, their own equipment (such as personal office supplies, telephone, vehicles and wet weather gear). Drivers are also responsible for ensuring such equipment is well maintained, safe and fit for its purpose.

Vehicle

14. The Driver Delivery Contract **sets out the Drivers' obligations regarding the safe** and legal operation of any vehicle used to provide the Services. The Driver Delivery Contract also states that Drivers must effect and maintain at their own cost and expense adequate public liability insurance (on terms agreed by Reach Media) and comprehensive motor vehicle insurance.

Payment

15. The Driver Delivery Contract states the following in relation to payment:

- The Driver will be paid for performing the Services at the rates set out in Schedule 2 of the Contract. (Rates are determined by the volume of the Unaddressed Mail deliveries.)
- These fees are the only amounts payable to the Driver in respect of the Services and are inclusive of all taxes (except GST) and other duties or levies.

- Reach Media will email the **Driver a “buyer-created tax invoice” twice a month**. The Driver must not send an invoice to Reach Media. The Driver must check the invoice and advise Reach Media of any errors. Payment will be made by way of direct credit to the **Driver’s bank account fortnightly on a Thursday**.
16. Schedule 3 of the Driver Delivery Contract requires Drivers to provide to Reach Media their personal details, bank details and, if they are GST registered, their IRD number.

Taxation

17. The Driver Delivery Contract states the following in relation to taxation:
- Drivers will register for GST with Inland Revenue if they are required to do so. The Contract sets out the current registration threshold.
 - Drivers are responsible for paying their own taxes on payments made to them by Reach Media under the Driver Delivery Contract.
 - Reach Media may be required to withhold taxes from its payments to the Driver, in which case the payments made will be reduced to the extent that tax is withheld. If Reach Media wrongly fails to withhold tax from payments made to the Driver, it will be entitled to recover such amounts from the Driver.

Termination of the Driver Delivery Contract

18. The Driver Delivery Contract states that Reach Media or the Driver may terminate the Driver Delivery Contract **for any reason by giving four weeks’ notice in writing**. However, if Reach Media believes the Driver is in serious breach of the Driver Delivery Contract or the Operational Manual (including any amendments), then Reach Media may terminate the Driver Delivery Contract immediately without notice.

Status of contractor

19. The Driver Delivery Contract states the following in relation to the contractor status of Drivers:
- The Driver is engaged by Reach Media under a contract for services, which means they are an independent contractor. The terms of the Driver Delivery Contract or its operation do not create an employment relationship between the Driver and Reach Media.
 - The Driver is free to accept other engagements or work while they are engaged by Reach Media. However, the Driver agrees not to undertake other work that does or may conflict with the interests of Reach Media.

Liability

20. The Driver Delivery Contract states the following in relation to liability:

- Drivers will undertake the Services at their own risk. This means Reach Media will not be liable to the Driver (or any other person) for any loss **resulting from the Driver's deliberate actions or negligence or where they breach any terms of the Driver Delivery Contract or the Operational Manual (and any amendments)**.
- The Driver agrees to indemnify Reach Media against any direct, indirect or consequential injury, loss or damage that Reach Media may suffer as a result of any breach by the Driver of the Driver Delivery Contract or arising out of an act, a default or an omission, or any representation made by the Driver. This indemnity will continue to apply after termination of the Driver Delivery Contract.

Delivery options

21. The Driver Delivery Contract states the following in relation to delivery options:
- **It is the Driver's responsibility to carry out the Services as required under the Driver Delivery Contract.**
 - If the Driver is sick or not able to personally carry out the Services, then they must arrange for someone else to do so. When they do this, the Driver is solely responsible for payment and all other obligations to others who assist them in this way.

Frequency of deliveries

22. The Driver Delivery Contract states that Reach Media does not guarantee any minimum amount of Unaddressed Mail for which the Driver will carry out the Services. The volume of Unaddressed Mail available for distribution will vary **depending on the time of year and the needs of Reach Media's clients.**

Operational Manual

23. The Operational Manual provides guidance and helpful information for Reach **Media's contractors on the completion of their duties under the** Driver Delivery Contract. The Operational Manual may be amended by Reach Media at any time and amendments will be identified to Drivers when they receive their Delivery Instructions. The Operational Manual is divided into two sections, the first of which is applicable only to Distributors.
24. Section Two of the Operational Manual is applicable to all Reach Media contractors, including Drivers, and provides that Drivers and their families may be ineligible to enter competitions advertised in Unaddressed Mail delivered by Drivers.

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 Driver by Reach Media under the Driver Delivery 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 Driver by Reach Media under the Driver Delivery 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 Driver under the Driver Delivery 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)