

## **PRODUCT RULING – BR PRD 16/13**

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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 (Supervisors) by Reach Media under a standard form contract, "Contract for Services to Supervise Delivery of Unaddressed Mail" (Supervision Contract or Contract), to oversee the delivery of unaddressed mail (including newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other similar items) (Unaddressed Mail) by Distributors in a defined area and complete related tasks.

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.
- Supervisors – persons who oversee the delivery of Unaddressed Mail by Distributors in a defined area and complete related tasks.
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
    - 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 item deliveries that are supervised by the Supervisors are not items the carriage of which 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).

## Supervision Contract

6. Supervisors are engaged under a standard form contract (Supervision Contract) to oversee the delivery of Unaddressed Mail by Distributors in a defined area and complete related tasks.
7. Supervisors agree that in providing the services under the Supervision 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 Supervision Contract, and it does not affect the nature of the contractual relationship between Reach Media and the Supervisors.
8. Specific procedural details referred to in the Supervision Contract are also provided in specific delivery instructions given to Supervisors before each job (Delivery Instructions). These Delivery Instructions contain information on the particular product being delivered. The Delivery Instructions also provide information to Supervisors about any changes that Reach Media has made to the Operational Manual.

9. The Supervision Contract will remain materially the same as the version provided to Inland Revenue on 24 June 2016.
10. The main terms of the Supervision Contract are summarised below.

### **Services**

11. The Supervision Contract states that Supervisors are required to complete the Services that are set out in Schedule 1 of the Supervision Contract. In completing the Services, Supervisors will:
  - ensure that 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 Supervision Contract states that the Services to be performed by all Supervisors are to:
  - oversee the physical delivery of the individual items of Unaddressed Mail by the Distributors to nominated individual delivery points;
  - maintain and supply to Reach Media details of current Distributors and provide information relating to any round changes and associated delivery quantities including “no circular” counts; and
  - ensure Distributors phone or text in confirmation of delivery before the close of the Delivery Window.
13. Certain Supervisors must also perform additional services. These are predominantly Supervisors who are not located in a metro area.

### **Equipment**

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

### **Payment**

15. The Supervision Contract states the following in relation to payment:
  - The Supervisor will be paid for performing the Services at the rates set out in Schedule 2 of the Supervision Contract. (Rates are determined by the volume of the Unaddressed Mail deliveries.)
  - These fees are the only amounts payable to the Supervisor in respect of the Services and are inclusive of all taxes (except GST) and other duties or levies.
  - Reach Media will email the **Supervisor a “buyer-created tax invoice”** before payment. The Supervisor must not send an invoice to Reach Media. The

Supervisor must advise Reach Media immediately if they believe the invoice is incorrect. Payment will be made by way of direct credit to the **Supervisor's bank account fortnightly on a Thursday.**

16. Schedule 3 of the Supervision Contract requires Supervisors to provide their personal details, bank details and, if they are GST registered, their IRD number.

### **Taxation**

17. The Supervision Contract states the following in relation to taxation:
- Supervisors will register for GST with Inland Revenue if required to do so. The Contract sets out the current registration threshold.
  - Supervisors are responsible for the payment of their own taxes on payments made to them by Reach Media under the Supervision Contract.
  - Reach Media may be required to withhold taxes from its payments to Supervisors, 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 a Supervisor, it will be entitled to recover such amounts from the Supervisor.

### **Termination of the Supervision Contract**

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

### **Status of contractor**

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

### **Indemnity**

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

### **Delivery options**

21. The Supervision Contract states the following in relation to delivery options:
- **It is the Supervisor's responsibility to carry out the Services as required** under the Supervision Contract.
  - If the Supervisor 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 Supervisor is solely responsible for payment and all other obligations to others who assist them in this way.

### **Frequency of deliveries**

22. The Supervision Contract states that Reach Media does not guarantee any minimum amount of Unaddressed Mail for which the Supervisor 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** Supervision Contract. Reach Media may amend the Operational Manual at any time and amendments will be identified to Supervisors 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 Supervisors, and provides that Supervisors and their families may be ineligible to enter competitions advertised in Unaddressed Mail delivered by Supervisors.

### **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 Supervisor by Reach Media under the Supervision **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 Supervisor by Reach Media under the Supervision **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 Supervisor under the Supervision 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)