

PRODUCT RULING – BR PRD 20/02

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 Restaurant Brands Limited.

Taxation Laws

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

This Ruling applies in respect of:

- ss BD 2, DA 1 and DA 2(4) and the definition of “income from employment” in s YA 1 for the period from 1 April 2008; and
- the definitions of “taxable activity” in s 6 of the Goods and Services Tax Act 1985 and “employment under any contract of service” in s 6(3)(b) of the Goods and Services Tax Act 1985.

The Arrangement to which this Ruling applies

The Arrangement is a recurring arrangement in terms of s 91F(1) of the Tax Administration Act 1994. It involves the engagement of delivery drivers by Restaurant Brands Limited (RBL) pursuant to the Independent Contractor Delivery Driver Contract for Services (Delivery Driver Contract) dated June 2018 in accordance with information in the Delivery Driver Operating Guide, Delivery Driver Personal Information and Payment Details form, Independent Contractor Delivery Driver Notice of Taxation Requirements, and standard practice information provided to Inland Revenue in the ruling application dated 18 December 2019 (collectively referred to as the relevant documents). Delivery drivers are engaged to deliver RBL products to RBL customers. Details of the Arrangement are set out in the following paragraphs.

Details of the Arrangement

Relationship between RBL and its delivery drivers

1. RBL prepares and sells a range of fast-food products through its brands in New Zealand. The brands operating under RBL are KFC, Pizza Hut, Carl’s Jr and Taco Bell. RBL sells its products through a chain of restaurants. RBL engages the services of delivery drivers to deliver its products to its customers from its restaurants. A delivery service is provided to its customers at some KFC and Pizza Hut restaurants. The delivery service may extend to other brands operating in New Zealand as required. Should RBL’s delivery service extend, all drivers will be contracted in an identical manner using the same documents attached to this application.

2. The relationship between the delivery drivers and RBL is governed by the:
 - Delivery Driver Contract dated June 2018, which includes:
 - an outline of delivery driver payments (cls 8 and 9);
 - the motor vehicle policy (cl 5);
 - liability and insurance (cl 12);
 - the driver uniform and delivery pouches policy (cl 13); and
 - mobile phone policy (cl 6);
 - Delivery Driver Personal Information and Payment Details form, which contains details of the driver and their bank account, vehicle, and motor insurance;
 - Delivery Driver Operating Guide, which incorporates:
 - the guideline on making the delivery;
 - food safety and hygiene;
 - the dress code;
 - vehicle maintenance and safety; and
 - service standards;
 - Independent Contractor Delivery Driver Notice of Taxation Requirements dated July 2018; and
 - standard practice information provided to Inland Revenue with the ruling application dated 18 December 2019.
3. RBL has two types of delivery driver: independent drivers (also referred to as owner-drivers) and in-store drivers. This ruling relates to only independent drivers (that is, delivery drivers who RBL contracts under the Delivery Driver Contract).
4. RBL Head Office communicates changes to the terms of the Delivery Driver Contract and Delivery Driver Operating Guide (for example, with respect to payments) to area managers and store managers by email. They then communicate changes to the delivery drivers orally with reference to the email received from RBL Head Office. The Delivery Driver Contract entered into with each respective driver is not physically amended.

Terms of the Delivery Driver Contract

Delivery driver obligations

5. Under the Delivery Driver Contract, the delivery driver agrees to:
 - perform the delivery services in a safe, proper and courteous manner with all due care and skill in accordance with the law and the Independent Contractor Delivery Driver Operating Guide (which may be varied from time to time) and must:

- report any accident to RBL
 - deliver RBL products to the nominated address within the specified period
 - report all customer concerns to RBL; and
 - inform RBL of changes to the vehicle being used to make deliveries, including its insurance status (cl 4.1);
 - where instructed by RBL, provide a float of \$20 for the purpose of providing change to customers (cl 4.2);
 - use only the motor vehicles detailed in the delivery driver's contract application to carry out the delivery services, unless otherwise approved in writing by RBL (cl 5.1);
 - be responsible for all running, fuel, licence, insurance and maintenance costs for the vehicle(s) (cl 5.3(c));
 - use a mobile phone to assist with carrying out the delivery services (cl 6.1), and that phone may be their own or rented from RBL at a cost of 50 cents per delivery (cl 6.2);
 - download and use a specific delivery app when performing their services and agree to the terms and conditions of the app (cl 6.3);
 - refer immediately to RBL any discrepancies on delivery with regards to the collection of money (cl 7.1(a));
 - provide, at the end of each delivery period, to RBL's authorised representative:
 - a complete account and record in the format specified by RBL (cl 7.1(b)(i)); and
 - all money collected from the customers of RBL during the delivery period (cl 7.1(b)(ii));
 - be liable for and indemnify RBL against any liability, loss, claim or proceedings arising out of or relating to the use of the driver's vehicles in the provision of delivery services (cl 12.1);
 - retain a minimum of third-party liability insurance in respect of the vehicle (cl 12.2);
 - return delivery pouches at the end of each delivery, and note that failure to do so entitles RBL to deduct the replacement cost from money owing to the delivery driver (cl 13.2);
 - produce to RBL's authorised representative documents that RBL considers necessary to establish that the delivery driver has complied and continues to comply with their obligations under the contract (cl 14.1).
6. Additionally, under the Delivery Driver Contract, the delivery driver:
- may choose to wear a uniform provided by RBL; if they do not wear the RBL uniform, they must comply with the dress code requirements (discussed in [16]) (cl 13.1);

- is not liable to take out any insurance or be responsible for loss or damage to products delivered as long as the loss or damage does not result from the delivery driver's wilful default, negligence or breach of the contract (cl 12.5); and
- may assign their rights and subcontract their services under the contract, provided they give RBL prior notice and receive written consent (cl 16.1).

RBL's obligations

7. RBL's obligations under the Delivery Driver Contract are as follows:
- RBL will pay the delivery driver for each delivery at the rate specified (cl 9.1).
 - RBL's engagement of the delivery driver does not commit RBL to a guarantee of any minimum level of deliveries (cl 1.2).
 - RBL reserves the right to engage the services of other delivery drivers (cl 1.3).
 - RBL is not responsible for any vehicle damage sustained as a result of the delivery driver's negligence or omission (cl 4.3).
 - Products carried by the delivery driver are at the risk of RBL (cl 12.5).
 - Delivery pouches remain the property of RBL (cl 13.2).

Delivery driver payments

8. RBL agrees to pay a:
- GST-registered delivery driver within 24 days of submission and approval of an invoice (cl 8.1); and
 - non-GST-registered delivery driver:
 - within 24 days of submission of an invoice (cl 8.2(a)); or
 - within 7 business days, if the delivery driver opts for RBL issuing a weekly buyer-created invoice (cl 8.2(b)).
9. Delivery drivers receive a delivery payment for a completed delivery only once the driver accepts the delivery, fulfils the delivery, and the delivery is captured as completed in the delivery app (cl 9.3).
10. In the case of a mistake requiring redelivery, the delivery driver will receive another delivery payment if the mistake was not the fault of the delivery driver (cl 9.4).
11. The delivery driver will be reimbursed for the delivery payment for the order if, through no fault of the driver (cl 10.1):
- a redelivery of a customer order is required because of an order complaint;

- the delivery driver cannot complete the delivery because of wrongly supplied delivery details;
- complaints are received indicating miscellaneous issues outside the delivery driver's control and the delivery driver is required to redeliver;
- complaints are received arising from food quality problems so the delivery driver is required to redeliver the order back to RBL;
- orders are cancelled after the delivery driver has left RBL's premises so the product must be returned to those premises;
- hoax orders have been made, so the product must be returned to RBL's premises.

12. Delivery drivers will not receive payments or reimbursement when (cl 11.1):

- complaints are received that the driver mishandled the order (eg, dropped food);
- complaints are received about the order missing items; or
- a delivery or pick up is of stock from other RBL stores (stock transfers are RBL's responsibility).

Additionally, delivery drivers will not receive payments or reimbursement if they cannot complete a delivery that has the correct delivery details. If in doubt about the delivery details, the delivery driver should call the RBL representative to clarify the details. The delivery driver can contact customers and the RBL representative using the phone details in the app. Delivery drivers are not separately reimbursed for calls to customers or back to the RBL store.

13. Delivery drivers are not guaranteed any minimum per hour delivery payment (cl 10.2).

Legal relationship between the parties

14. The legal relationship between the delivery driver and RBL is as described in the Delivery Driver Contract as that of "principal and independent contractor and not that of employer and employee" (cl 3.1).

Termination of the contract

15. Either party may terminate the Delivery Driver Contract on notice to the other party at the conclusion of any delivery (cl 2.1).

Key contents of the Delivery Driver Operating Guide

16. The Delivery Driver Operating Guide covers the dress code, making the delivery, and taxation requirements.

Dress code requirements

17. The dress code requires delivery drivers to:

- wear closed heel and toe footwear;
- wear clothes that are clean, in good condition, and fit properly; and
- not wear clothing with offensive slogans or messaging.

The dress code recommends that delivery drivers wear the safety bump hat and high-visibility vest during all deliveries.

Making the delivery

18. A section in the operating guide is called “Making the delivery”. It suggests how deliveries are to be made and how to handle customer complaints. The appendix to the operating guide includes a section on safety (Appendix 1.4).

Notice of taxation requirements

19. The Contract Delivery Drivers Notice of Taxation Requirements is a guide in the operating guide that states:
- the delivery driver is not an employee of RBL;
 - the delivery driver should seek independent taxation advice to understand their rights and obligations;
 - PAYE will not be deducted from payments for deliveries;
 - the gross values of all payments received by the delivery driver for deliveries must be included in the delivery driver’s annual income tax return;
 - the delivery driver must calculate and pay their earner premium at the end of the year when they file their tax return;
 - the delivery driver may be liable to pay provisional tax; and
 - the delivery driver must register for GST if the delivery driver has income of \$60,000 or more.

Standard practice information

20. Delivery drivers are not:
- entitled to overtime or sick pay;
 - required to belong to any union;
 - allowed to supervise employees of RBL;
 - allowed to access RBL’s administration or support services, but they may access staff toilets;
 - allowed to advertise for work or have their own client base, in relation to RBL products. There are no restrictions on the delivery drivers providing services to any other entity or person.
21. Also, delivery drivers:

- can decide the hours they work (provided work is expected to be available), but it is standard practice that delivery drivers make themselves available for rostered hours;
 - provide their own vehicles and associated equipment;
 - may work for another entity or person;
 - must hold an appropriate driver licence.
22. RBL trains delivery drivers in how to make deliveries and tells them the geographical area they will work in.
23. RBL employees take orders over the phone and decide the delivery sequence of the orders. A maximum of two orders can be delivered at any one time (to maintain the quality of the product).
24. RBL may, at its discretion, pay delivery drivers a minimum of two deliveries per hour during certain hours to maintain minimum coverage for RBL during quiet periods.
25. A delivery driver may find their own replacement driver, but in practice this does not happen as RBL generally uses another delivery driver.

Relationship between RBL employees and delivery drivers

26. In-store employees may sometimes make home deliveries, while also carrying out employment duties in the store. These employees are contracted with RBL under employment contracts. However, they are remunerated for each delivery performed. These employees also do other tasks (such as making pizzas and cleaning). In contrast, delivery drivers are contracted only to deliver products and are not required to perform other tasks.

No other documentation has a bearing on this Ruling

27. No other collateral contracts, agreements, terms or conditions, written or otherwise, have a bearing on the conclusions reached in this Ruling.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- (a) RBL will provide the delivery drivers with the Independent Contractor Delivery Driver Notice of Taxation Requirements dated July 2018 at the start of the contract and advise the delivery drivers that as independent delivery drivers they are required to comply with their own income tax, GST, and accident compensation obligations.
- (b) The actual relationship between RBL and the delivery driver is, and will continue to be, during the period this Ruling applies, in accordance with the terms of the relevant documents in all material respects.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any condition stated above, the Taxation Laws apply to the Arrangement as follows:

- For the purposes of ss BD 2, DA 1 and DA 2(4), payments RBL makes to the delivery driver are not "income from employment" as defined in s YA 1. Therefore, the driver is not prevented from claiming deductions under these sections by reason only that the driver earns "income from employment".
- For the purposes of the Goods and Services Tax Act 1985, the driver's provision of services to RBL is not excluded by s 6(3)(b) of the Goods and Services Tax Act 1985 from the definition of "taxable activity" in s 6 of the Goods and Services Tax Act 1985 as they are not made under "contracts of service".

The period or income year for which this Ruling applies

This Ruling will apply for the period from 1 January 2020 until 31 December 2023.

This Ruling is signed by me on the 1st day of July 2020.

Jessica Griffin

Group Lead – Customer Compliance, CCS - Business