

## **PRODUCT RULING - BR Prd 06/02**

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

### **Name of the Person who applied for the Ruling**

This Ruling has been applied for by LetterBox Channel Limited (“LBC”), a wholly owned subsidiary of New Zealand Post Limited.

### **Taxation Law**

All legislative references are to the Income Tax Act 2004 (“the ITA”) unless otherwise stated.

This Ruling applies in respect of sections DA 2(4), CE 1 ; definitions of “employment income”, “extra pay”, “income from employment”, “salary or wages”, and “withholding payment” in section OB 1 ; the definition of “source deduction payment” in section OB 2(1); the definition of “PAYE rules” in section OB 1 , regulation 4(1) and clause 5(d) of Part A of the Schedule to The Income Tax (Withholding Payments) Regulations 1979 (“the Regulations”); and section 6(3)(b) of the Goods and Services Tax Act 1985 (‘The GST Act’).

### **The Arrangement to which this Ruling applies**

The Arrangement is the engagement of persons (“the Supervisors”) by Franchisees pursuant to a standard form contract for facilitation of the distribution of circular advertising, free newspapers and samples etc, through the management of Runners and administration of the services provided by the Franchisee to its clients. Further details of the Arrangement are set out in the paragraphs below.

1. LBC carries on the business of distributing newspapers, leaflets, brochures, catalogues, advertising material, samples and other such items (unaddressed mail) to households and other premises throughout New Zealand.
2. LBC intends to implement a franchise model under which Franchisees will engage the Supervisors pursuant to a standard form contract, the conditions contained in which are required to be agreed to by the Supervisors when entering into the contact (“the Contract”).



3. The Contract requires Supervisors to facilitate the distribution of the unaddressed mail through oversight of Runners and administration of the delivery services provided by the Franchisee. The Supervisors are paid specified rates for the services they provide.
4. Supervisors will essentially fall into two categories:
  - (a) those that are engaged by a Franchisee to operate in rural and regional towns where the Franchisee is not based (“Remote Town locations”); and
  - (b) those that are engaged by a Franchisee to operate in cities and towns where the Franchisee is based (“Base City locations”).
5. Supervisors in Remote Town locations will own and supply all the equipment necessary to perform the services, and they are likely to have other business interests in addition to their role as a Supervisor in a Remote Town location. Franchisees will engage these Supervisors pursuant to the Contract.
6. Supervisors in Base City locations will usually either:
  - (a) be “Labour Processing Supervisors” (i.e. provide the processing and administrative services listed at Schedule 1 of the Contract); or
  - (b) be “Physical Transport Supervisors” (i.e. provide the collection, transportation and physical delivery services listed at Schedule 1 of the Contract).
7. The Labour Processing Supervisors are unlikely to be suited to an independent contractor relationship, as their role will likely be of a full time nature situated at the Franchisee’s premises, primarily under the instruction of the Franchisee. Franchisees will usually engage these Supervisors as employees.
8. However, the nature of the activities undertaken by Physical Transport Supervisors would be suited to independent contractor relationships. For Base City Locations, the collection and delivery services will be significant due to the high number of runs in these locations. It is likely that a Franchisee will contract multiple Physical Transport Supervisors due to the volume and time factors. This will generally not be a full time role for these Supervisors. They will own and supply all the equipment necessary to perform the services, and they are likely to have other business interests in addition to their role as a Physical Transport Supervisor. Accordingly, Franchisees will engage these Supervisors pursuant to the Contract.
9. The Contract is affixed to this Ruling as Appendix I.
10. The items, the collection and delivery of which is managed by the Supervisor pursuant to the Contract, are not items the carriage of which requires LBC or the relevant Franchisee to be registered as a postal operator under the Postal Services Act 1998.

### **Conditions stipulated by the Commissioner**



This Ruling is made subject to the following conditions:

- The relationship between a Franchisee and the Supervisor is, and during the period of this Ruling will continue to be, entirely in accordance with the Contract affixed to this Ruling as Appendix I, and there are no other collateral contracts, agreements, terms or conditions, written or otherwise, relating to the engagement of the Supervisor.
- LBC has identified that Franchisees may engage Supervisors to carry out certain processing and administrative services on terms which, at law, should be characterised as a contract of service. In particular, paragraphs 6 and 7 of the Arrangement set out an example of such an arrangement, being the engagement of Labour Processing Supervisors in Base City locations which may not be suited to an independent contractor relationship. This Ruling does not apply to Labour Processing Supervisors in Base City locations who have entered into the Contract but who, at law, are employees carrying out the services under a contract of service.

### **How the Taxation Laws apply to the Arrangement**

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

- For the purposes of the PAYE rules, any payment made to a Supervisor by a Franchisee pursuant to the Contract will not be “salary or wages” or “extra pay” within the meaning of those terms as defined in section OB 1. To the extent that any such payment is also not a “withholding payment” it will therefore not be a “source deduction payment” as defined in section OB 2(1), for the purposes of the PAYE rules.
- For the purposes of sections DA 2(4) and CE 1, any payment made to a Supervisor by a Franchisee pursuant to the Contract will not be “income from employment” or “employment income” as those terms are defined in section OB 1.
- For the purposes of the PAYE rules, any payment made to a Supervisor by a Franchisee pursuant to the Contract will not be a “withholding payment” as defined in section OB 1.
- For the purposes of the PAYE rules, any payment made to a Supervisor by a Franchisee pursuant to the Contract will not fall within the class of payment specified in clause 5(d) of Part A of the Schedule to the Regulations and will not be declared to be a “withholding payment” by regulation 4(1) of the Regulations
- For the purposes of the GST Act, the provision of services by any Supervisor to a Franchisee under the Contract will not be excluded from the definition of “taxable activity” in section 6 of that Act by section 6(3)(b) of that Act.

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

This Ruling will apply for the period 1 January 2006 to 31 December 2011

This Ruling is signed by me on the 8 day of March 2006.

Maryanne Hansen  
Manager, Corporates

Appendix 1

«FR\_CO\_NAME» FRANCHISEE LIMITED

## CONTRACT FOR SERVICES

(Supervise delivery of papers/circulars  
etc)

The delivery of circulars is part of our Kiwi culture. Being a Contractor to a Franchise which distributes papers and circulars gives you the chance to be your own boss and run your own business. It is flexible and results based - you get out what you put in.

As a Contractor to the Franchise, you will facilitate the distribution of circular advertising, free newspapers and samples etc through the management of Contracted Runners and administration of the services «FR\_CO\_NAME» provides for its clients. «FR\_CO\_NAME» believes that New Zealand's future depends on an entrepreneurial spirit. «FR\_CO\_NAME» looks forward to your contribution to this vision and sharing in the benefits of being in business with «FR\_CO\_NAME».

### PARTIES

1. «FR\_CO\_NAME» Franchisee Limited, a duly incorporated company having its registered office at «FR\_CO\_REGD\_ADD» («FR\_CO\_NAME»)
2. «PERS\_NAME» of «PERS\_STREET» «PERS\_TOWN\_SUBURB» «PERS\_CITY» ("the Contractor" or "you")

«FR\_CO\_NAME» is pleased to engage you as a Contractor from *[insert "go live" date]* on the terms and conditions set out in this contract.

### SERVICES

You are required to complete the Services that are set out in the attached **Schedule 1**. Please read the Schedule carefully and ask «FR\_CO\_NAME» if you have any questions in relation to the Services.

In completing the Services you will:

- ensure that your other business commitments do not affect your obligations to «FR\_CO\_NAME»; and
- comply with any applicable legislation including that related to tax and health and safety.

#### **EQUIPMENT**

You are responsible for providing, at your expense, your own equipment, such as personal office supplies, telephone, vehicles and wet weather gear. You are also responsible for ensuring that such equipment is well maintained, safe and fit for its purpose.

#### **PAYMENT**

You will be paid for performing the Services at the rates set out in **Schedule 2**.

You will need to submit monthly invoices to «FR\_CO\_NAME»«DIST\_NAME» for the Services you have completed. Once you have submitted correct and completed invoices to «FR\_CO\_NAME» then payment will be made by way of direct credit to your bank account within *[insert time period]*. An example of the form to be used for invoicing is at **Schedule 4**. «FR\_CO\_NAME» will provide you with a draft invoice statement at the end of each month and you will be required to check the details and sign and resubmit the invoice to «FR\_CO\_NAME» if the payment details are correct.

The fees specified in **Schedule 2** are the only amounts payable to you in respect of the Services and are inclusive of all taxes (except GST) and other duties or levies.

In the event of any dispute over invoiced services «FR\_CO\_NAME» may withhold the portion of the invoice that relates to the dispute pending resolution, provided that this facility shall not be used as a penalty and shall reflect only the relative value of the contracted services in dispute.

#### **TAXATION**

You are solely responsible for your own Accident Compensation levies, income tax liabilities and GST liabilities or other income related payment or deductions that may be legislated from time to time.

You will register for GST with the Inland Revenue Department if required to do so. The current threshold for this is \$40,000. You should refer any questions about this directly to the IRD. If you are GST registered please include your GST number at **Schedule 6**.

You are responsible for the payment of your own taxes on payments made to you by «FR\_CO\_NAME» under this contract. «FR\_CO\_NAME» may be required to withhold taxes from its payments to you. If this is the case, the payment made to you by «FR\_CO\_NAME» will be reduced to the extent that tax is withheld. If «FR\_CO\_NAME» wrongly fails to withhold tax from payments to you, it will be entitled to recover such amounts from you.

#### **TERMINATION OF CONTRACT**

Either you or «FR\_CO\_NAME» may terminate this contract for any reasons whatsoever by giving four weeks notice in writing. However, if «FR\_CO\_NAME» believes that you are in serious breach of this contract then «FR\_CO\_NAME» may terminate this contract immediately without notice. 'Serious breach' includes, but is not limited to:

- dumping papers/circulars;
  - failing to properly monitor and manage the deliveries undertaken by the Contracted Runners;
  - inappropriate behaviour towards a Contracted Runner;
  - theft or fraudulent or dishonest activities;
  - incomplete or late completion of the Services, including late deliveries to the Contracted Runners;
- engaging in conduct which is, or may be, likely to injure the reputation or interests of «FR\_CO\_NAME» or the advertisers whose material you are delivering, or bring, or potentially bring, «FR\_CO\_NAME» into disrepute.

#### **STATUS OF CONTRACTOR**

You are engaged by «FR\_CO\_NAME» under a contract for services, which means that you are an independent

contractor. The terms of this contract or its operation do not therefore create an employment relationship between you and «FR\_CO\_NAME».

You are free to accept other engagements or work while you are engaged by «FR\_CO\_NAME». However you agree not to undertake other work which conflicts with, or may conflict with, the interests of «FR\_CO\_NAME» (including its relationships with clients or advertisers).

#### **NO LIABILITY**

You will undertake the Services at your own risk. This means that «FR\_CO\_NAME» will not be liable to you (or any other person) for any loss resulting from your deliberate actions, your negligence, or where you breach any term of this Contract.

#### **DELIVERY OPTIONS**

It is your responsibility to carry out the Services as required under this contract. If you are sick or not able to personally carry out the Services then you must arrange for someone else (such as a sub contractor or friend or family member) to do so. When you do this, you will be solely responsible for payment and all other obligations to others who assist you in this way.

#### **FREQUENCY OF DELIVERIES**

«FR\_CO\_NAME» does not guarantee any minimum amount of material for which you will carry out the Services. The volume of material available for distribution will vary depending on the time of year and needs of Letterbox Channel's customers. «FR\_CO\_NAME» will do its best to advise you of anticipated volumes as far in advance as possible.

#### **COMPETITIONS**

You and your immediate family members may be prevented from entering competitions advertised in material delivered by you to the Contracted Runners, by the terms and conditions of those competitions.

#### **ISSUES**

If issues arise between «FR\_CO\_NAME» and you, both parties agree to raise and discuss issues in an open manner. If any outstanding issues are not able to be worked out between us, you agree to attend mediation in a further attempt to try and resolve them. If the issues are still unresolved after mediation has taken place, either you or «FR\_CO\_NAME» can refer them to the Disputes Tribunal for a binding decision to be made if the claim is for an amount less than \$12,000. If the matter remains unresolved, the matter can be referred to the District Court for a binding ruling. If the amount claimed is greater than \$12,000 then the matter can be referred to the District Court for a binding decision. The process to be followed is outlined further in **Schedule 5**.

#### **HEALTH AND SAFETY**

While «FR\_CO\_NAME» will make reasonable efforts to ensure that you operate safely, you are required to take all practical steps to ensure your own safety, and the safety of others (including the Contracted Runners) and inform «FR\_CO\_NAME» immediately if issues arise. You will be provided with a copy of «FR\_CO\_NAME»'s health and safety materials and are required to observe «FR\_CO\_NAME»'s policies and procedures at all times.

#### **NOTICES**

Every notice to be given under or in connection with this Contract must be given in writing to the address of the other party as specified in **Schedule 2**.

#### **COMPLETE AGREEMENT**

Please sign the second copy of this contract, completing the details in **Schedule 6** and return in the enclosed reply paid envelope.

This contract is the full and entire agreement between you and «FR\_CO\_NAME» and supersedes all previous written and oral agreements, representations and contracts between you and «FR\_CO\_NAME».

**SIGNED** for and on behalf of «FR\_CO\_NAME» Franchisee Limited

by:

name of authorised signatory

position

date

by: «PERS\_\_NAME»

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness

\_\_\_\_\_

Occupation of Witness

\_\_\_\_\_

City/town of residence]

Signature of Contractor

## SCHEDULE 1

### CONTRACTED SERVICES

You are engaged as a contractor to oversee the delivery of material by Contracted Runners in a defined area (as set out in **Schedule 3**) and complete related tasks.

The Services you are to perform fall into the following categories:

- Collection – either physically collecting the bulk product from LBC's premises and transporting it back to either your own or «FR\_CO\_NAME»'s premises for further processing, or oversight of this activity.
- Processing – either physically bundling and strapping the bulk product into runs, including the attachment of consignment notes to the bundles of circulars, or oversight of this activity
- Transport to Round – either physical transportation of the bundled product from either your own or «FR\_CO\_NAME»'s premises to the Contracted Runners premises or oversight of this activity.

- Physical Delivery – oversight of the physical delivery of the individual items by the Contracted Runners to nominated individual delivery points.

- Administration – administration of the activities and runners as agreed between you and «FR\_CO\_NAME»

«FR\_CO\_NAME» and you will agree which tasks are required for which runs prior to the contract being finalised. The schedule of tasks will be included in this contract as an appendix as per the table below.

	Run Number	Collection	Processing	Transport to Round	Physical Delivery
	«RUN»	Yes/No	Yes/No	Yes/No	Yes/No

### Administration

Yes/No

### SCHEDULE 2

#### 1. FEES FOR CONTRACTED SERVICES

*[Insert basis on which fees will be calculated]*

#### 2. NOTICES

All notices will be served on the parties at the following addresses:

«FR\_CO\_NAME» Franchisee Limited:  
[Name] Phone: []  
[full address] Fax: []

The Contractor:  
[Name] Phone: []  
[full address] Fax: []

3. Name of «FR\_CO\_NAME» Contact:

«SUPERVISOR\_OR\_FRANCHISEE\_CONTACT\_NAME»:

Contact Number: «SUPERVISOR\_OR\_FRANCHISEE\_CONTACT\_PHONE»

**SCHEDULE 3**

**MAP OF CONTRACTED AREA OF SUPERVISION**

The Franchisee will provide you with maps of the individual runs.

**SCHEDULE 4**

**Insert Supervisor Contractor's Name (For a Supervisor)**

**Insert Contractor's physical Address**

**TAX INVOICE**

**«FR\_CO\_NAME» Franchise Limited Date:**

«FR\_CO\_REGD\_ADD» **Invoice Number:**

**GST Number:**

**ATTN: «FR\_NAME» Contractor:**

(insert date of invoice)

(insert Invoice no.)

(insert contractor's GST number, if applicable)

«PERS\_NAME»

Particular	Quantity	Rate
------------	----------	------

Collection Fee

Processing Fee

Transport to Rounds Fee

Physical Delivery Fee

Administration Fee

Sub Total

Invoice Total

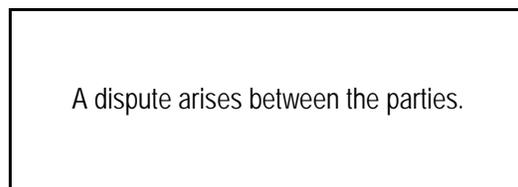
**Total**

*Payments will be made by direct credit to account (insert bank account details) within [insert time period]*

Signature of Contractor:..... Dated:.....

**SCHEDULE 5**

Flowchart for handling disputes:



Resolved?  
YES

or  
NO

No further  
action



Dispute is documented and the parties meet to consider.

Resolved?  
**YES**

or  
**NO**

No further  
action

Mediation Process

Resolved?  
**YES**

or  
**NO**

No further  
action

Claim < \$12,000

Disputes  
Tribunal

OR

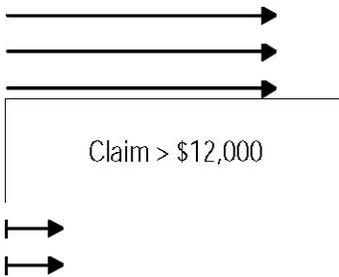
Resolved?  
**YES**  
or **NO**

Claim > \$12,000

District Court

Binding  
decision

No further action



SCHEDULE 6



1. SUPERVISOR CONTRACTOR PERSONAL DETAILS

Surname:

.....

First Names:

.....

Address:

.....

.....

.....

Telephone Number:

Area Code ( ) Number.....

2. SUPERVISOR CONTRACTOR BANK ACCOUNT DETAILS

[please attach a bank deposit slip or fill out the section below]

Full Name:

