

PRODUCT RULING - BR Prd 09/03

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 Reach Media New Zealand Limited ("Reach Media").

Taxation Law

This Ruling applies in respect of:

- section DA 2(4) of the Income Tax Act 2007;
- the definitions of "extra pay", "income from employment", "PAYE rules", "salary or wages" and "schedular payment" in the Income Tax Act 2007; and
- section 6(3)(b) of the Goods and Services Tax Act 1985 ("GST Act").

The Arrangement to which this Ruling applies

The Arrangement is the engagement of people ("Drivers") by Reach Media to transport unaddressed mail (newspapers, leaflets, brochures, catalogues, advertising material, samples and other such items) from Reach Media's premises to pre-determined drop-off locations.

The Drivers will not be transporting any item the carriage of which requires Reach Media to be registered as a postal operator under the Postal Services Act 1998, and Reach Media will not register as such.

The Drivers are engaged pursuant to a standard form contract. Further details of the Arrangement are as follows.

1 The parties to the Arrangement are:

- Reach Media: a company that carries on the business of delivering unaddressed mail to New Zealand households; and
- Drivers: people who use their own vehicles to transport unaddressed mail from Reach Media's premises to pre-determined drop-off locations.

2 Reach Media also contracts, although they are not parties to the Arrangement:

- distributors: people who deliver the unaddressed mail from the drop-off locations to households and other premises throughout New Zealand; and

- supervisors: people who are responsible for overseeing the distributors and for performing certain administration functions relating to the delivery of unaddressed mail.
- 3 Reach Media has processing branches throughout the country. A network of distributors and Drivers delivers circulars. A network of supervisors manages the distributors. The Drivers, distributors and supervisors are paid on a “piece rate” basis. In the case of the Drivers, this is under the Contract for Services to Perform Driver Delivery Services of Papers and Circulars (“the Contract”).
 - 4 Under the heading “Services”, the Contract requires the Drivers to:
 - complete the services set out in Schedule 1 of the Contract;
 - ensure other business commitments do not affect their obligations to Reach Media; and
 - comply with tax and health and safety legislation.
 - 5 Schedule 1 of the Contract requires Drivers to collect particular items within a specified period from Reach Media’s premises and transport those items to pre-determined drop-off locations.
 - 6 Schedule 1 specifies the services for which the Drivers are contracted.
 - The Driver is engaged to deliver the delivery material to the contracted distributors in a defined area and complete related tasks.
 - The services Drivers are to perform are the collection of stock, physical delivery of individual items, and physical return of surplus stock.
 - 7 Under the heading “Equipment”, the Contract states that the Drivers are responsible for providing their own equipment (such as personal office supplies, a telephone, a vehicle and wet weather gear) at their own expense. The Drivers are also responsible for ensuring that such equipment is well maintained, safe and fit for purpose.
 - 8 Schedule 2 specifies the fees Reach Media is to pay the Drivers. They are the only amounts payable in respect of the services and are inclusive of all taxes (except GST) and other duties and levies.
 - 9 Each Driver’s fee for undertaking the services for Reach Media is calculated under Schedule 2 at a rate determined by the volume of deliveries.
 - 10 Under the heading “Payment”, the Contract specifies that Reach Media will provide a draft invoice to Drivers twice a month. The Drivers must check the invoice and advise Reach Media of any errors. Payment is made by direct credit within seven days.
 - 11 Under the heading “Taxation”, the Contract specifies that the Drivers are responsible for the payment of their own taxes on payments made to them by Reach Media under the Contract. Reach Media may be required to withhold taxes from its payments. If so, the payment made will be reduced to the extent that tax is withheld.

- 12 Under the heading "Termination of Contract", the Contract states that Reach Media or the Drivers may terminate the contract for any reasons whatsoever by giving four weeks' notice in writing. However, if Reach Media believes there has been a serious breach of the Contract, then Reach Media may terminate the Contract immediately without notice.
- 13 Under the heading "Status of Contractor", the Contract defines the contractor's status as follows.
- Reach Media engages the Driver under a contract for services, so the Driver is an independent contractor. The terms of the contract or its operation do not create an employment relationship between the Driver and Reach Media. These statements in the Contracts are referred to in this Ruling as the "Clarification Statements".
 - The Driver may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
- 14 Under the heading "No Liability", the Contract states that the Driver is to 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 there is a breach of any term of this contract.
- 15 Under the heading "Delivery Options", the Contract states that the Driver is responsible for arranging for someone else to carry out the services if the Driver is unable to work. The Driver is solely responsible for payment and all other obligations to others who help them in this way.
- 16 Under the heading "Frequency of Deliveries", the Contract states that Reach Media does not guarantee any minimum amount of material for which the Driver will carry out the services.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions.

- a) The Contract entered into between Reach Media and the Drivers is the same as that provided to the Inland Revenue Department in the Ruling application dated 8 July 2008, except in relation to immaterial details such as fees, rates, frequency of invoices, defined areas, names and addresses.
- b) The relationship between Reach Media and the Driver is, and will continue to be during the period this Ruling applies, in accordance with all of the material terms of the Contract.

For the avoidance of doubt, the Clarification Statements are not considered to be material for the purposes of these conditions.

How the Taxation Laws applies to the Arrangement

Subject in all respects to any assumption or condition stated above, the Taxation Laws applies to the Arrangement as follows.

- For the purposes of the PAYE rules, any payment Reach Media makes to a Driver pursuant to the Contract will not be “salary or wages” or “extra pay” or a “schedular payment” within the meaning of those terms as defined in sections RD 5, RD 7 and RD 8 respectively of the Income Tax Act 2007.
- For the purpose of section DA 2(4) of the Income Tax Act 2007, any payment Reach Media makes to a Driver pursuant to the Contract will not be “income from employment”.
- For the purposes of the GST Act, the provision of services by any Driver under the Contract will not be excluded from the definition of “taxable activity” in section 6 of the GST Act, by section 6(3)(b) of the GST Act.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 July 2008 and ending on 30 June 2012.

This Ruling is signed by me on the 20 day of April 2009.

Ross Baxter
Acting Sector Manager