

PRODUCT RULING - BR Prd 09/04

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 ("Country Supervisors") by Reach Media to provide certain supervisory services in country areas in relation to the delivery of unaddressed mail (newspapers, leaflets, brochures, catalogues, advertising material, samples and other such items).

The Country Supervisors will not be delivering 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 Country Supervisors 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
- Country Supervisors: people who are, or are to be, contracted by Reach Media to provide certain supervisory services in country areas in relation to the delivery of unaddressed mail.

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

- drivers: people who use their own vehicles to deliver the unaddressed mail from Reach Media's premises to a series of pre-determined drop-off locations; and
- distributors: people who deliver the unaddressed mail from the drop-off locations to households and other premises throughout New Zealand.

- 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 Country Supervisors, this is under the Contract for Services to Supervise Delivery of Papers and Circulars ("the Contract").
- 4 Under the heading "Services", the Contract requires Country Supervisors 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 Country Supervisors to prepare for and oversee the delivery of material by distributors in a defined area.
- 6 Schedule 1 specifies the services for which the Country Supervisors are contracted.
 - Country Supervisors are engaged as contractors to oversee the delivery of material to the contracted distributors in a defined area and complete related tasks.
 - The services Country Supervisors must perform are the processing of stock, the overseeing of the physical delivery of individual items, and administration and customer services.
- 7 On occasion, the Country Supervisors will also perform delivery services of the type that would otherwise be performed by Distributors and receive a piece rate payment for performing such services. Such a situation is not recorded in writing in the Contract but instead represents an oral variation of the Contract.
- 8 While Country Supervisors also sign contracts with Distributors on behalf of Reach Media, these contracts are still between Reach Media and the Distributor.
- 9 Under the heading "Equipment", the Contract specifies that the Country Supervisors are responsible for providing their own equipment at their own expense, such as personal office supplies, a telephone, a vehicle and wet weather gear. The Country Supervisors are also responsible for ensuring that such equipment is well maintained, safe and fit for purpose.
- 10 Schedule 2 of the Contract specifies the fees Reach Media will pay to the Country Supervisors. Subject to any oral variation of the type described in paragraph 7, these are the only amounts payable by Reach Media in respect of the services of the Country Supervisors and are inclusive of all taxes (except GST) and other duties and levies.
- 11 Each Country Supervisor's fee for undertaking services for Reach Media is calculated under Schedule 2 of the Contract at a rate determined by the volume of deliveries.
- 12 Under the heading "Payment", the Contract provides that Reach Media will provide the Country Supervisors with a draft invoice twice a month. The Country Supervisors must check the invoice and advise Reach Media of any errors. Payment is made by direct credit within seven days.

- 13 Under the heading "Taxation", the Contract specifies that the Country Supervisors are responsible for paying their own taxes on payments Reach Media makes to them 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.
- 13 Under the heading "Termination of Contract", the Contract states that Reach Media or the Country Supervisors may terminate the contract for any reason 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.
- 15 Under the heading "Status of Contractor", the Contract defines the contractor's status as follows.
 - Reach Media engages the Country Supervisor under a contract for services, so the Country Supervisor is an independent contractor. The terms of the contract or its operation do not create an employment relationship between the Country Supervisor and Reach Media. These statements in the Contract are referred to in this Ruling as the "Clarification Statements".
 - The Country Supervisor may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
- 16 Under the heading "No Liability", the Contract states that the Country Supervisor undertakes the services at their own risk. This means Reach Media will not be liable to the Country Supervisor (or any other person) for any loss resulting from the Country Supervisor's deliberate actions or negligence or where there is a breach of any term of this contract.
- 17 Under the heading "Delivery Options", the Contract states that the Country Supervisor is responsible for arranging for someone else to carry out the services if the Country Supervisor is unable to work. The Country Supervisor is solely responsible for payment and all other obligations to others who help them in this way.
- 18 Under the heading "Frequency of Deliveries", the Contract states that Reach Media does not guarantee any minimum amount of material for which the Country Supervisor 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 Country Supervisors 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 Country Supervisor 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 Country Supervisor 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 Country Supervisor pursuant to the Contract will not be “income from employment”.
- For the purposes of the GST Act, the provision of services by any Country Supervisor 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