

PRODUCT RULING - BR Prd 09/05

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 ("Distributors") by Reach Media for the physical delivery by the Distributors of unaddressed mail to households and other premises throughout New Zealand.

The Distributors 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 Distributors are engaged pursuant to a standard form contract. From 1 February 2008 until 31 July 2008, Distributors were engaged under the contract provided to the Inland Revenue Department on 8 July 2008 ("the Initial Contract"). From 1 August 2008, the Distributors were engaged under the contract provided to the Inland Revenue Department on 17 December 2008 ("the Revised Contract"). The two contracts are referred to throughout as "the Contracts". Further details of the Arrangement are set out 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
- Distributors: people who are, or are to be, contracted by Reach Media to deliver 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

- supervisors: people who are responsible for overseeing the Distributors and perform 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 Distributors this is under the Contract for Services – Distribution Contractor.
- 4 Under the heading “Deliveries”, the Contracts state that the Distributor agrees to deliver in accordance with Schedule 1 of the Initial Contract and Schedule 2 of the Revised Contract. Distributors must:
- use reasonable care when making deliveries;
 - ensure other commitments do not affect their obligations to Reach Media; and
 - comply with tax and health and safety legislation.
- 5 The Contracts require Distributors to deliver to every letterbox at every house or flat in the area given to them.
- 6 The Contracts specify that the Distributors are responsible for doing the deliveries at a time they choose, within the time-frames Reach Media communicates.
- 7 Under the heading “Delivery Equipment”, the Contracts state that the Distributors are responsible for providing their own delivery equipment (such as bags, vehicles, footwear and wet weather gear) at their own expense. The Distributors are also responsible for ensuring that such equipment is well maintained, safe and fit for purpose.
- 8 The Contracts specify the fees Reach Media will pay the Distributors. They are the only amounts payable by Reach Media in respect of the services and are inclusive of all taxes (except GST) and other duties and levies.
- 9 Each Distributor’s fee for undertaking the services for Reach Media is calculated under the Contracts at a rate determined by the volume of deliveries.
- 10 Under the heading “Payment”, the Contracts provide that Reach Media will provide to the Distributors a draft invoice twice a month. The Distributors 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 Contracts specify that the Distributors 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.
- 12 Under the heading “Termination of Contract”, the Contracts state that Reach Media or the Distributors may terminate the contract for any reason by giving two weeks’ notice in writing. However, if Reach Media believes there has been a serious breach of the Initial Contract or the Revised Contract, then Reach Media may terminate the relevant Contract immediately without notice.

- 13 Under the heading "Status of Contractor", the Contracts define the contractor's status as follows.
- The Distributor is engaged by Reach Media under a contract for services, so the Distributor is an independent contractor. Terms of the contract or its operation do not create an employment relationship between the Distributor and Reach Media. These statements in the Contracts are referred to in this Ruling as the "Clarification Statements".
 - The Distributor may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
- 14 Under the heading "No Liability" in the Initial Contract and "Liability" in the Revised Contract, the Contracts state that the Distributor is to undertake the services at their own risk. This means Reach Media will not be liable to the Distributor (or any other person) for any loss resulting from the Distributor's deliberate actions or negligence or where there is a breach of any term of this contract.
- 15 Under the heading "Delivery Options", the Contracts state that the Distributor is responsible for arranging for someone else to carry out the Distributor's services if the Distributor is unable to work. The Distributor 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 Contracts state that Reach Media does not guarantee any minimum amount of material for which the Distributor will carry out the services.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions.

- a) The Contracts entered into between Reach Media and the Distributors are the same as those provided to the Inland Revenue Department in the Ruling application dated 8 July 2008 and on 17 December 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 Distributor is, and will continue to be during the period this Ruling applies, in accordance with all of the material terms of the Contracts.

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 Distributor pursuant to the Contracts will not be "salary or wages" or "extra

- For the purpose of section DA 2(4) of the Income Tax Act 2007, any payment Reach Media makes to a Distributor pursuant to the Contracts will not be "income from employment".
- For the purposes of the GST Act, the provision of services by any Distributor under the Contracts 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 01 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