

PRODUCT RULING - BR Prd 09/06

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;
- section 6(3)(b) of the Goods and Services Act 1985 ("GST Act").

The Arrangement to which this Ruling applies

The Arrangement is the engagement of people ("Metro Supervisors") by Reach Media to provide certain supervisory services in metropolitan areas in relation to the delivery of unaddressed mail (newspapers, leaflets, brochures, catalogues, advertising material, samples and other such items).

The Metro Supervisors will not be supervising the delivery of 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 Metro 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;
 - Metro Supervisors: people who are, or are to be, contracted by Reach Media to provide certain supervisory services in metropolitan areas in relation to the delivery of unaddressed mail.
- 2 Although not parties to the Arrangement, Reach Media also contracts :
 - 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;
 - 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 New Zealand. Circulars are delivered by a network of distributors and drivers. These distributors are managed by a network of supervisors. The drivers, distributors and supervisors are paid on a "piece rate" basis. In the case of the Metro 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 Metro Supervisors to:
 - complete the services set out in Schedule 1 of the Contract;
 - ensure their other business commitments do not affect their obligations to Reach Media;
 - comply with relevant tax and health and safety legislation.
- 5 Schedule 1 requires Metro 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 Metro Supervisors are contracted.
 - Metro Supervisors are engaged as contractors to oversee the delivery of material by the contracted Distributors in a defined area and to complete related tasks.
 - The services Metro Supervisors are to perform are to oversee the physical delivery of individual items, administration and customer services.
- 7 On occasion the Metro 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 Metro 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 states that Metro Supervisors are responsible for providing their own equipment (such as personal office supplies, a telephone, vehicles and wet weather gear) at their own expense. The Metro Supervisors are also responsible for ensuring such equipment is well maintained, safe and fit for purpose.
- 10 Schedule 2 specifies the fees Reach Media is to pay Metro 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 provided by the Metro Supervisors and are inclusive of all taxes (except GST) and other duties and levies.
- 11 Each Metro Supervisor's fee for undertaking the services for Reach Media is calculated under Schedule 2 at a rate determined by the volume of deliveries.
- 12 Under the heading "Payment", the Contract specifies that Reach Media will provide the Metro Supervisors with a draft invoice twice a month. The Metro Supervisors must check the draft 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 Metro 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.
- 14 Under the heading "Termination of Contract", the Contract states that Reach Media or the Metro Supervisors may terminate the contract for any reasons 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 Metro Supervisor under a contract for services, so the Metro Supervisor is an independent contractor. The terms of the contract or its operation do not create an employment relationship between the Metro Supervisor and Reach Media. These statements in the Contracts are referred to in this Ruling as the "Clarification Statements".
 - The Metro 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 Metro Supervisors are to undertake the services at their own risk. This means Reach Media will not be liable to the Metro Supervisor (or any other person) for any loss resulting from their 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 Metro Supervisor is responsible to arrange for someone else to carry out the services if the Metro Supervisor is unable to work. The Metro Supervisor is solely responsible for payment and all other obligations to anyone who helps 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 Metro 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 Metro Supervisors are 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 actual relationship between Reach Media and the Metro 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 made to a Metro Supervisor by Reach Media 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 made to a Metro Supervisor by Reach Media pursuant to the Contract will not be "income from employment".

- For the purposes of the GST Act, the provision of services by any Metro 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