

PRODUCT RULING - BR Prd 13/03

This is a product ruling made under s 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

All legislative references are to the Income Tax Act 2007 ("the Act") unless otherwise stated.

This Ruling applies in respect of:

- the definitions of "extra pay", "income from employment", "PAYE rules", "salary or wages" and "schedular payment" in the Act;
- section DA 2(4) of the Act; 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 ("Distributors") by Reach Media to physically deliver unaddressed mail (newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other such items) from drop-off locations to households and other premises throughout New Zealand.

Further details of the Arrangement are set out in the paragraphs below.

1. The Parties to the Arrangement are:
 - (a) Reach Media: a New Zealand incorporated company that is currently owned equally by New Zealand Post Limited and Salmat International Pty Limited, and which carries on the business of delivering unaddressed mail to New Zealand households.
 - (b) Distributors: persons who physically deliver the unaddressed mail from the drop-off locations to households and other premises throughout New Zealand.
2. Although not technically parties to the Arrangement, Reach Media also contracts with:
 - (a) Supervisors: persons who are or are to be contracted by Reach Media to provide certain supervisory services in metropolitan or rural areas in relation to the delivery of unaddressed mail.
 - (b) Drivers: persons who use their own vehicles to transport the unaddressed mail from Reach Media's premises to a series of pre-determined drop-off locations.

3. The Distributors will not be carrying any item 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.
4. Reach Media is currently run by a management team based in Auckland with processing branches throughout the country. Unaddressed mail is delivered by a network of Distributors, Drivers and Supervisors.
5. Reach Media's processes and systems are aligned with industry practice. The industry uses a delivery model of supervisors who co-ordinate the activities of a team of distributors. The Drivers, Distributors and Supervisors are paid on a "piece rate" basis under contracts for services (i.e. as independent contractors).
6. The Distributors are engaged under a standard form contract – Contract for Services – Distribution Contractor, to physically deliver unaddressed Mail from the drop-off locations to households and other premises throughout New Zealand ("the Contract").
7. There are two versions of the Contract. Most of the Distributors are currently engaged under the earlier version – ("Version 1 Contract"). Reach Media is in the process of introducing the later version – ("Version 2 Contract") for newly-engaged Distributors.
8. There is no material difference between the two versions of the Contract. The changes reflected in the Version 2 Contract were made to improve the simplicity and readability of the Contract, and to shift non-material content to an online Operational Manual which the Distributors are instructed to also consult. There is therefore no material difference between the Version 2 Contract and the Version 1 Contract on which the previous Product ruling – BR Prd 09/05 is based.
9. Specific procedural details referred to in both versions of the Contract are also provided in specific Delivery Instructions given to the Distributors before each Job ("the Delivery Instructions").
10. The key changes reflected in the Version 2 Contract are:
 - the inclusion of reference to the Operational Manual;
 - the removal of the Delivery Guidelines from Schedule 2 of the Version 1 Contract to the first part of Section 1 of the Operational Manual;
 - the removal of the list of important things that Distributors should do and should not do when carrying out their obligations under the Contract from Schedule 3 of the Version 1 Contract to the second part of Section 1 of the Manual;
 - the removal of the competition section from the body of the Contract and transferring it to section 2 of the Operational Manual;
 - some alteration to the way piece rates are calculated in schedule 2 of the Version 2 Contract;

- the removal of Schedule 4 (the dispute resolution flowchart) and Schedule 5 (the geographic map).
11. The Operational Manual does not replace or override any of the material terms of the Contract, and it does not affect the nature of the contractual relationship between Reach Media and the Distributors.
 12. The terms of the Contract under various headings are as follows.
 13. Under the heading "Deliveries", the Contract states the Distributor agrees to:
 - deliver all product (papers/circulars) received by the Distributor from Reach Media to the letter boxes in the Distributor's Round within the timeframes ("the "Delivery Window") communicated by Reach Media on the Delivery Instructions (exactly when each Distributor completes the deliveries within the delivery window is at the Distributor's discretion).
 - make all deliveries in accordance with the delivery Guidelines in Schedule 2 (which may be amended by Reach Media from time to time) (Version 1 Contract).
 - make all deliveries in accordance with the delivery Guidelines in the Manual (which may be amended by Reach Media from time to time) (Version 2 Contract).
 - ensure other commitments do not affect the Distributor's obligations to Reach Media.
 - comply with tax and health and safety legislation (version 1 contract)
 - familiarise himself or herself with, and fully comply with, the Operational Manual (and any amendments) and any applicable legislation including that related to Tax and Health and Safety (Version 2 Contract).
 14. Under the heading "Payment" the fees are the only amounts payable in respect of the services and are inclusive of all taxes (except GST) and other duties and levies. Each Distributor's fee for undertaking the services for Reach Media is calculated under Schedule 2 at a rate determined by the volume of deliveries. Under version 2 of the Contract, Payment is made by direct credit fortnightly and on a Thursday. Under version 1 Contract payment is made on the 2nd and 7th of each month. Reach Media will provide a buyer created invoice to Distributors within 7 days of payment. The implication of these provisions is that Reachmedia will provide an invoice to Distributors (which takes the form of a buyer created tax invoice for GST-registered Distributors or a similar invoice for Distributors who are not GST-registered) prior to payment, with payment made on a fortnightly basis.
 15. Schedule 1 of the Contract requires Distributors to provide their personal, bank and Inland Revenue details.
 16. Under the heading "Delivery Equipment", the Contract states that the Distributors 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 Distributors are also responsible for ensuring that such equipment is well maintained, safe and fit for its purpose.

17. Under the heading "Taxation", the Contract specifies that the Distributors are responsible for the payment of their own taxes, duties and levies (including income tax, GST and Accident Compensation levies if applicable), and any other income related payments or deductions that may be legislated from time to time. The Distributors will register for GST with Inland Revenue if required to do so, and will advise Reach Media that they are GST registered. Reach Media will then provide them with a buyer created tax invoice and they must not send a GST tax invoice to Reach Media.
18. Under the heading "Termination of Contract", the Contract states that Reach Media or the Distributors may terminate the contract for any reasons whatsoever by giving two 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. Under the Version 2 Contract Reach Media may also terminate the Contract for serious breach of the Manual (and any amendments).
19. Under the heading "Status of Contractor", the Contract defines the contractor's status as follows:
 - Reach Media engages each Distributor under a contract for services, so the Distributor is an independent contractor; the terms of the Contract or its operation do not create an employment relationship between the Distributor and Reach Media. (These statements in the Contract are referred to in the Ruling as the "Clarification Statements". They are not considered to be material for the purposes of the conditions that the ruling is subject to).
 - The Distributor may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
20. Under the heading "Liability",
 - The Version 1 Contract states 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.
 - The Version 2 Contract states 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 or the Manual (and any amendments).
21. 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.

22. Under the heading "Frequency of Deliveries", the Contract states that Reach Media does not guarantee any minimum amount of Deliveries as the volume of product available for distribution will vary depending on the time of year and the requirements of Reach Media's clients.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) The terms of the Contract entered into between Reach Media and the Distributors are the same as those contained in the Version 1 Contract and Version 2 Contract provided to the Inland Revenue Department in the Ruling Application dated 26 November 2012, except in relation to immaterial details such as fees, rates, frequency of invoices, defined areas, names and addresses that are contained in the Online Operational Manual or specific Delivery instructions; and
- b) The relationship between Reach Media and any of the Distributors is, and during the period of this Ruling will apply, 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 apply to the Arrangement

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

- a) For the purposes of the PAYE rules, any payment made to a Distributor by Reach Media under 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 s RD 5, RD 7 and RD 8 respectively of the Act.
- b) For the purpose of section DA 2(4), any payment made to a Distributor by Reach Media under the Contract will not be "income from employment".
- c) For the purposes of the GST Act, the provision of services by any Distributor under the Contract will not be excluded from the definition of "taxable activity" (as defined 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 beginning on 1 July 2012 and ending on 30 June 2016.

This Ruling is signed by me on the 29th day of April 2013.

Maryanne Hansen
Investigation Manager, Investigations and Advice