

## **PRODUCT RULING - BR Prd 13/04**

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 ("Drivers") by Reach Media to transport unaddressed mail (newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other such items) from Reach Media's premises to a number of pre-determined drop-off locations.

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) 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.
2. Although not technically parties to the Arrangement, Reach Media also contracts with:
  - (a) Distributors: persons who physically deliver the unaddressed mail from the drop-off locations to households and other premises throughout New Zealand.
  - (b) 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.

3. The Drivers 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 Drivers are engaged under a standard form contract – Contract for Services to Perform Driver Delivery Services of Papers and Circulars or Contract for Services to Perform Driver Delivery Services of Unaddressed Mail ("the Contract").
7. There are two versions of the Contract. Most of the Drivers are currently engaged under the earlier version – Contract for Services to Perform Driver Delivery Services of Papers and Circulars ("Version 1 Contract"). Reach Media is in the process of introducing the later version – Contract for Services to Perform Driver Delivery Services of Unaddressed Mail ("Version 2 Contract") for newly-engaged Drivers.
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 Drivers 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 09/03 is based.
9. Specific procedural details referred to in both versions of the Contract are also provided in specific Delivery Instructions given to the Drivers 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 inclusion of the Vehicle section, defining more clearly Driver's obligations for vehicle safety and obtaining insurance;
  - 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 3 (the geographic map), Schedule 4 (the template tax invoice) and schedule 5 (the dispute resolution flowchart) as included in the Version 1 Contract; and
  - the renumbering of the Driver details form as schedule 3 of the version 2 Contract (previously this was Schedule 6 of the Version 1 Contract).

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 Drivers.
12. The terms of the Contract under various headings are as follows.
13. 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 (Version 1 Contract)
  - familiarise themselves 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. 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.
15. 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.
16. 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 its purpose.
17. Under the heading "Vehicle" (Version 2 Contract), each Driver's obligations for vehicle safety and obtaining insurance are defined more clearly.
18. 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 Driver's fee for undertaking the services for Reach Media is calculated under Schedule 2 at a rate determined by the volume of deliveries. The Version 1 Contract specifies that Reach Media will provide a draft invoice to Drivers twice a month, and that an example of the invoice is at schedule 4. The Version 2 Contract specifies that Reach Media will provide a "buyer created tax invoice" to the Drivers. The Drivers must check the invoice and advise Reach Media of any errors. Payment is made by direct credit within seven days. The implication of these provisions is that Reachmedia will provide an invoice to Drivers (which takes the form of a

buyer created tax invoice for GST-registered Drivers or a similar invoice for Drivers who are not GST-registered) prior to payment, with payment made on a fortnightly basis.

19. Under the heading "Taxation", the Contract states that the Drivers will register for GST with Inland Revenue if required to do so. It provides the current registration threshold. The Version 2 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; that Reach Media may be required to withhold taxes from its payments; and if so, the payment made will be reduced to the extent that tax is withheld.
20. 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. Under the Version 2 Contract Reach Media may also terminate the Contract for serious breach of the Operational Manual (and any amendments).
21. Under the heading "Status of Contractor", the Contract defines the contractor's status as follows:
  - Reach Media engages each 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 Contract are referred to in this 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 Driver may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
22. Under the heading "No Liability",
  - The Version 1 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.
  - The Version 2 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 or the Operational Manual (and any amendments). The Driver agree to indemnify Reach Media against any direct, indirect or consequential injury, loss or damage that Reach Media may suffer as a result of any breach by the Driver, of the Contract or arising out of an act, default or omission, or any representation made by you. This indemnity will continue to apply after termination of the Contract.
23. 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 him or her in this way.

24. 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 terms of the Contract entered into between Reach Media and the Drivers are the same as those contained in the Version 1 Contract or 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 Drivers 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 Driver 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 Driver 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 Driver 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