

PRODUCT RULING - BR Prd 13/05

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

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) 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.
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) 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 items deliveries that are supervised by the Supervisors are not items 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.
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 Supervisors are engaged under a standard form contract – Contract for Services to Supervise Delivery of Papers and Circulars (in metro or rural areas), or Contract for Services to Supervise Delivery of Unaddressed Mail ("the Contract").
7. There are two versions of the Contract. Most of the Supervisors are currently engaged under the earlier version – Contract for Services to Supervise Delivery of Papers and Circulars - Metro, or Contract for Services to Supervise Delivery of Papers and Circulars – Country ("Version 1 Contracts"). Reach Media is in the process of introducing the later version – Contract for Services to Supervise Delivery of Unaddressed Mail ("Version 2 Contract) for newly-engaged Supervisors.
8. The two contracts in the Version 1 Contracts are virtually identical. The only difference is that the services to be provided by a rural Supervisor under Schedule 1 include (under the heading "Processing Stock"), the preparation and distribution of unaddressed mail to Distributors operating under the rural Supervisor. Schedule 1 for metro supervisors does not include this service. This difference is reflected in Schedule 1 of the Version 2 Contract where the Processing Stock service is to be deleted for metro supervisors. The Version 2 Contract is in essence a single contract for both metro and rural Supervisors. 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 Supervisors are instructed to also consult. There is therefore no material difference between the Version 2 Contract and the Version 1 Contracts on which the previous Product Rulings – BR Prd 09/04 and BR Prd 09/06 are based.
9. Specific procedural details referred to in both versions of the Contract are also provided in specific Delivery Instructions given to the Supervisors 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 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 Contracts; and
 - the renumbering of the Supervisor 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 Supervisors.
 12. The terms of the Contract under various headings are as follows.
 13. Under the heading "Services", the Contract requires the 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;
 - comply with tax and health and safety legislation (Version 1 Contracts);
 - 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 Supervisors to oversee the delivery of material by Contracted Distributors in a defined area and to complete related tasks.
 15. Schedule 1 specifies the services for which the Supervisors are contracted:
 - Processing Stock: Preparation and distribution of stock to each Contracted Distributor within the Supervisor's area (this requirement is deleted for metro Supervisors).
 - Physical Delivery: Overseeing of the physical delivery of the individual items by the Contracted Distributors to nominated delivery points.
 - Administration: maintain and supply to Reach Media details of current Contracted Distributors and provide information in relation to any Round changes and associated delivery quantities including No Circular counts.
 - Client Service: ensure delivery contractors phone or text in conformation of delivery before the close of the Delivery Window.
 16. Under the heading "Payment" the fees are the only amounts payable in respect of the Deliveries and are inclusive of all taxes (except GST) and other duties and levies. Each Supervisor's fee for performing the Services

for Reach Media is calculated at the rates set out in Schedule 2. Under Version 1 Contracts Reach Media will provide a draft monthly invoice twice a month for contracted deliveries to Supervisors and make payment by direct credit within 7 days. Under Version 2 Contract Reach Media will provide a "buyer created tax invoice" prior to payment and will make payment by direct credit fortnightly on a Thursday. The implication of these provisions is that Reachmedia will provide an invoice to Supervisors (which takes the form of a buyer created tax invoice for GST-registered Supervisors or a similar invoice for Supervisors who are not GST-registered) prior to payment, with payment made on a fortnightly basis.

17. Under the heading "Equipment", the Contract states that the Supervisors 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 Supervisors are also responsible for ensuring that such equipment is well maintained, safe and fit for its purpose.
18. Under the heading "Taxation", the Contract states that the Supervisors will register for GST with Inland Revenue if required to do so. It provides the current registration threshold. The Contract specifies that the Supervisors 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.
19. Under the heading "Termination of Contract", the Contract states that Reach Media or the Supervisors 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 Manual (and any amendments).
20. Under the heading "Status of Contractor", the Contract defines the contractor's status as follows:
 - Reach Media engages each Supervisor under a contract for services, so the Supervisor is an independent contractor; the terms of the Contract or its operation do not create an employment relationship between the Supervisor and Reach Media. (These statements in the Contracts 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 Supervisor may accept other engagements or work while engaged by Reach Media unless there is a conflict of interest.
21. Under the heading "Indemnity",
 - The Version 1 Contracts state that the Supervisor is to undertake the services at their own risk. This means Reach Media will not be liable to the Supervisor (or any other person) for any loss resulting from the Supervisor's deliberate actions or negligence or where there is a breach of any term of this contract.
 - The Version 2 Contract states that the Supervisor is to undertake the services at their own risk. This means Reach Media will not be liable

to the Supervisor (or any other person) for any loss resulting from the Supervisor's deliberate actions or negligence or where there is a breach of any term of this contract or the Manual (and any amendments).

22. Under the heading "Delivery Options", the Contract states that the Supervisor is responsible for arranging for someone else to carry out the services if the Supervisor is unable to work. The Supervisor is solely responsible for payment and all other obligations to others who help them in this way.
23. Under the heading "Frequency of Deliveries", the Contract states that Reach Media does not guarantee any minimum amount of material for which the Supervisor 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 Supervisors are the same as those contained in the Version 1 Contracts 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 Supervisors 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 Supervisor 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 Supervisor 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 Supervisor 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