

PRODUCT RULING – BR Prd 14/06

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 PMP Distribution Limited (PMP Distribution).

Taxation Law

All legislative references are to the Income Tax Act 2007 (Income Tax 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 Income Tax Act;
- section DA 2(4); 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 **persons** (“Supervisors”) by PMP Distribution pursuant to the Independent Contractor Agreement (“the Contract”) to provide certain supervisory services in metropolitan and rural areas in relation to the delivery of unaddressed newspapers, circulars, leaflets, brochures, catalogues, advertising material, samples and other such items to households and other premises throughout New Zealand.

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

Parties to the Arrangement

1. The parties to the Arrangement are:
 - PMP Distribution, a wholly owned subsidiary of PMP (NZ) Limited, which operates in the print media industry; and
 - Supervisors, who are people who are or are to be contracted by PMP Distribution to provide certain supervisory services throughout New Zealand in relation to the delivery of unaddressed mail.
2. PMP Distribution also contracts with Deliverers, although they are not technically parties to the Arrangement. Deliverers are people who physically deliver the unaddressed mail from drop-off locations to households and other premises throughout New Zealand.

Delivery of circulars

3. The circular deliveries that are supervised by the Supervisors under the Contract are not items the carriage of which requires PMP Distribution to be registered as a postal operator under the Postal Services Act 1998, and PMP Distribution will not register as such.

Meaning of terms in the contract

4. The Supervisors are engaged under the Contract between PMP Distribution and the Supervisors.
5. Within the Contract, defined terms and their meanings are:
 - “Contractor”, which means **the same as “Supervisor”**;
 - “Distributor”, which means the deliverer of circulars and is equivalent to and interchangeable with **the term “Deliverer”**;
 - the “Manual”, which means the Supervisors’ instructions published by PMP Distribution; and
 - the “Company”, which means PMP Distribution.
6. The 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 PMP Distribution and the Supervisors.

Terms of the contract

7. The terms of the Contract under various headings are as follows.

Services

8. Under the heading Services, the Contract requires the Supervisors to:
 - ensure all circulars are delivered to households in accordance with the PMP Distribution instructions;
 - be aware that PMP Distribution may vary the volume of deliveries or make changes in areas serviced by Supervisors;
 - be responsible for the appointment of Deliverers;
 - oversee the delivery of material by contracted Deliverers in a defined area and to complete related tasks;
 - not pay Deliverers directly; and
 - familiarise themselves with, and fully comply with, the Manual (and any amendments) and any applicable legislation, including that related to tax and health and safety.

Payment

9. Under the heading Payment, the Contract provides that PMP Distribution will pay Supervisors monthly in arrears. The basis for the calculation of the payment to Supervisors is the quantity of each job, as shown on the Supervisor worksheet for the distribution supervised by the Supervisor. Schedule 2 specifies the fees PMP Distribution is to pay the Supervisors.
10. All payments the Supervisor receives are gross payments, and the Supervisor is solely responsible for its own accident compensation levies, income tax liabilities, and GST liability under the Income Tax Act, the GST Act and the Accident Compensation Act 2001.
11. PMP Distribution may be required to withhold statutory deductions from the payments; if so, the payment made will be reduced to the extent that the payment is withheld.

Liability and claims

12. Under the heading Liability and Claims, the Contract states that the Supervisor will be responsible for all errors, omissions, loss or damage that are its responsibility having regard to standards of service and compliance with the Manual as required by PMP Distribution. This means PMP Distribution 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.**
13. The Supervisor must take out insurance to indemnify PMP Distribution against any damage or loss arising from the Supervisor's actions or relating to the services that the Supervisor will provide.

Motor vehicle, telephone, office and storage facilities

14. Under the heading Motor Vehicle, Telephone, Office and Storage Facilities, 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 purpose. The Supervisor will be responsible for all costs and services incurred in providing the services.

Relief Supervisor

15. Under the heading Relief Supervisor, the Contract provides that the Supervisor shall appoint a Relief Supervisor to temporarily undertake the obligations of the Contractor if the Supervisor is unable to work. An appointment of a Relief Supervisor by the Supervisor must be approved in writing by PMP Distribution. The Supervisor is solely responsible for payment and all other obligations to others who help them in this way.

Termination

16. Under the heading Termination, the Contract states that PMP Distribution or the Supervisor may terminate the Contract for any reasons whatsoever by giving **four weeks' notice in writing. However, if PMP Distribution** believes a serious breach of the Contract has occurred, then PMP Distribution may terminate the Contract immediately by written notice.

Term

17. Under the heading Term, the Contract provides that the Agreement shall commence from the commencement date until terminated in accordance with the conditions in the termination section of the Contract.

Relationship

18. Under the heading Relationship, the Contract defines **the contractor's status as follows:**
 - The Supervisor is an independent contracting party and not an agent or employee of PMP Distribution.
 - The terms of the Contract or its operation do not create an employment relationship between the Supervisor and PMP Distribution.

Conflict of Interest

19. Under the heading Conflict of Interest, a Supervisor may accept other engagements or work while engaged by PMP Distribution unless there is a conflict of interest.

General

20. Under the heading General, the Contract provides a process of resolving any dispute or conflict that arises.

Three schedules

21. Schedule 1 contains the personal information of Supervisors contracted by PMP Distribution.
22. Schedule 2 specifies Supervisors' rates of payment based on quantities and weights of circulars.
23. Schedule 3 provides a template for a GST letter to be used by Supervisors who are GST registered.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- a) The Contract entered into between PMP Distribution and the Supervisors is the same as that provided to the Inland Revenue Department in the Ruling Application dated 16 December 2013, except in relation to immaterial details such as fees, rates, frequency of invoices, defined areas, names and addresses that are in the operational Manual or specific delivery instructions.
- b) The relationship between PMP Distribution 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.

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 PMP Distribution **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 ss RD 5, RD 7 and RD 8 respectively.**
- b) For the purpose of s DA 2(4), any payment made to a Supervisor by PMP Distribution **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 s 6 of the GST Act) by s 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 December 2013 and ending on 30 November 2017.

This Ruling is signed by me on the 23rd of June 2014.

James Mulcahy

Investigations Manager