

Product Ruling – BR Prd 22/03

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of person who applied for the Ruling

This Ruling has been applied for by Ovato Residential Distribution NZ Limited (Ovato Residential).

Taxation Laws

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

This Ruling applies in respect of:

- ss DA 2, RA 5, RD 5, RD 7 and RD 8; and
- s 6 of the Goods and Services Tax Act 1985 (GST Act).

The Arrangement to which this Ruling applies

The Arrangement is the engagement of Deliverers by Ovato Residential under a Deliverers' Handbook and Contract (the Contract) to deliver unaddressed mail such as free newsletters, community newspapers, magazines, directories, circulars and samples and other similar items to households and other premises throughout New Zealand.

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

- 1) Ovato Residential is in the business of distributing unaddressed mail such as newsletters, newspapers, circulars, flyers, mailers, catalogues, pamphlets and other similar items to households and other premises throughout New Zealand.
- 2) Ovato Residential distributes only unaddressed mail. Ovato Residential is not registered as a "postal operator" under the Postal Services Act 1998, as it is not involved in the carriage of "letters" (as defined in s 2 of the Postal Services Act 1998) or addressed mail.
- 3) Ovato Residential engages the Deliverers under the Contract, which includes a Deliverers' Handbook that sets out the conditions that the Deliverers agree to abide by.

Main terms of the Contract

- 4) Under the heading "Description of Services", the Contract requires the Deliverer to deliver product as provided by Ovato Residential on a pre-agreed schedule to private addresses, and the parties acknowledge that the Deliverer is an independent contractor and not an agent, partner or employee of Ovato Residential.
- 5) Under the heading "Payment", the Contract states that the Deliverer is solely responsible for their own Accident Compensation Corporation (ACC) levies, income tax liabilities and GST liabilities. The Deliverer also acknowledges that the Contract is not a contract of employment governed by the Employment Relations Act 2000 and the Holidays Act 2003. Both parties acknowledge and agree that all payments received by the Deliverer pursuant to this agreement are gross payments.
- 6) Under the heading "Delivery Payment Rates", the Contract specifies the standard minimum rates based on the number of items delivered, type of item and weight.
- 7) Under the heading "Reduction/Variation of Workload", the Contract states that due to the nature of Ovato Residential's business, it may cease to distribute any regular publications without notice, and that the volume and timing of work may vary.
- 8) Under the heading "Performance of Services", the Contract states that:
 - The Deliverer may subcontract the services, or otherwise engage or obtain assistance from others to perform the services.
 - The Deliverer may provide and use (at the Deliverer's cost, expense and risk) a car, trolley or other carrying equipment in connection with the delivery of the items. Scooters and motorcycles are also acceptable.
 - The Deliverer is an independent contractor and as such is free to select their own means and methods of performing the services and the hours during which they will perform the services, as long as they keep within the delivery window Ovato Residential has requested.
 - The Deliverer is responsible/liable for all errors, omissions, loss or damage that are the Deliverer's responsibility/liability as established by the Contract.
- 9) Under the heading "Termination", the Contract states that either party may terminate the Contract by giving the other party 14 days' notice in writing. Furthermore, Ovato Residential may terminate the Contract immediately if there has been a serious breach.
- 10) The Deliverers' Handbook part of the Contract provides the following information to the Deliverer:
 - which houses to deliver to and how to deliver circulars;

- when deliveries are to be done and what the regular delivery days are;
 - getting the correct number of circulars;
 - what to do in the event of absence;
 - reporting injuries and other problems with deliveries to their Supervisor;
 - dealing with dog issues and interference with delivered material;
 - completing an ACC form in the case of injury (the handbook reiterates that Deliverers are self-employed and states that they should not enter Ovato Residential as an employer on the ACC form);
 - disposing of excess circulars;
 - delivering during daylight and taking care crossing roads;
 - health and safety procedures.
- 11) The Contract will remain materially the same as the version provided to Inland Revenue on 22 November 2021.

How the Taxation Laws apply to the Arrangement

Taxation Laws apply to the Arrangement as follows:

- (a) For the purpose of the "PAYE rules", payments Ovato Residential makes to a Deliverer 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 of the Act respectively.
- (b) For the purposes of s DA 2(4) of the Act, any payment Ovato Residential makes to a Deliverer under the Contract will not constitute "income from employment".
- (c) Under s RA 5(1)(a) of the Act, Ovato Residential is not required to withhold tax from payments it makes to a Deliverer under the Contract.
- (d) For the purposes of the GST Act, s 6(3)(b) will not exclude the provision of services by any Deliverer under the Contract from the definition of "taxable activity" in s 6(1).

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 July 2019 and ending on 30 June 2024.

This Ruling is signed by me on the 21st day of February 2022.

Graham Poppelwell
Group Lead

About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.