


CR 2017/60 - Fringe benefits tax: corporate clients of Salary Packaging Australia Pty Ltd (SPA) who participate in SPA's bus travel benefit scheme

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Class Ruling

Fringe benefits tax: corporate clients of Salary Packaging Australia Pty Ltd (SPA) who participate in SPA's bus travel benefit scheme

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❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary – what this ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this ruling are:

- section 45 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 47(6) of the FBTAA.

All references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is employers who are clients of Salary Packaging Australia Pty Ltd (SPA) that provide a smartcard to their employees to facilitate travel on buses between the employees' places of residence and their places of employment.

Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 7 to 21 of this Ruling.

5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

Date of effect

6. This Ruling applies from 1 April 2017 to 31 March 2022. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

7. The following description of the scheme is based on information provided by the applicant.

8. SPA will enter into contractual arrangements with state providers of bus travel (State Providers) as agent on behalf of the employers.

9. The State Providers will provide the employers (through SPA) with travel smartcards (smartcard) which act as an electronic ticketing system.

10. Employees will enter into salary sacrifice arrangements with their employer. Amounts salary sacrificed by employees will be paid by employers to SPA who will then transfer funds to the State Providers. The funds will be used to top up the employee's smartcard in order to pay for travel.

11. SPA as agent for the employer will provide the smartcards to the employees but they will remain held by the employer. The smartcard will have an identification number which is linked to and identifies the employee.
12. The smartcard is non-transferable and only for travel between the employee's place of residence and place of employment. Each employee will only be issued with one smartcard.
13. Employees will be required to provide a declaration stating that the smartcard will be used only for bus travel between the employee's place of residence (address included) and place of employment (address included). The declarations will also include a statement by the employees that the smartcard will be returned to the employer or SPA when their employment has ceased.
14. On behalf of the employer, SPA will conduct a range of safeguards to ensure that the employee only uses the smartcard for bus travel between home and work.
15. The State Providers will provide SPA with access to the details of smartcard usage. This can be accessed at any time by SPA and the details are updated as soon as the travel occurs.
16. SPA will check a percentage of the records of use for the employer's employees every month to make sure employees are using the smartcards correctly.
17. Where an employee has misused the smartcard, in the first and second instances of misuse the employee will be required to repay to the employer the cost of the benefit received from the use of the smartcard. If the card is used incorrectly a third time, the State Provider will cancel the smartcard upon the request of SPA acting on behalf of the employer.
18. When employees terminate employment, their smartcard is to be returned to the employer. SPA will then arrange for any balance of moneys on the smartcard to be returned to the employer.
19. Under the terms of the employee's salary sacrifice arrangement, the employer will pay the appropriate balance of funds to the employee less the required PAYG withholding.
20. When an employee goes on a significant period of leave, the employer will advise SPA. SPA will instruct the relevant State Provider to suspend the smartcard so that it is not available for use while the employee is on leave.
21. Lost or stolen smartcards will be cancelled and the balance of the funds transferred to a replacement card.

Ruling

22. The employee's use of the smartcard provided by the employer is a residual benefit as per section 45.

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23. The residual benefit that arises from the employee's use of the smartcard is an exempt benefit under subsection 47(6) if the private use of the smartcard is for bus travel between the employee's place of residence and work.

Commissioner of Taxation

6 September 2017

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

24. Section 45 provides that a benefit is a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive). Divisions 3 to 10 are not relevant to this scheme. Division 2 and Division 11 may be relevant to this scheme.

25. Division 2 applies to car fringe benefits. The definition of a car in subsection 136(1) refers to subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997). Under subsection 995-1(1) of the ITAA 1997, a car is defined as a 'motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.' As such, a bus does not fall within the definition of 'car' and is not covered by Division 2.

26. Division 11 applies to property fringe benefits. Section 40 states:

Where, at a particular time, a person (in this section referred to as the provider) provides property to another person (in this section referred to as the recipient), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

27. The definition of 'provide' in subsection 136(1) is:

- (a) in relation to a benefit--includes allow, confer, give, grant or perform; and
- (b) in relation to property--means dispose of (whether by sale, gift, declaration of trust or otherwise):
 - (i) if the property is a beneficial interest in property but does not include legal ownership--the beneficial interest; or
 - (ii) in any other case--the legal ownership of the property.

28. There is no disposal of the legal ownership or beneficial interest in the bus as required by the definition of provide in relation to property. Therefore the bus is not provided by the employer to the employee and the benefit is not covered by Division 11.

29. As the benefit provided by the employer does not fall within any of the provisions of Subdivision A of Divisions 2 to 11 it is a residual benefit as per section 45.

30. Subsection 47(6) outlines the conditions that must be met for a residual benefit to qualify as an exempt benefit, stating:

Where:

- (a) a residual benefit consisting of the provision or use of a motor vehicle is provided in a year of tax in respect of the employment of a current employee;
- (aa) the motor vehicle is not:
 - (i) a taxi let on hire to the provider; or
 - (ii) a car, not being:
 - (A) a panel van or utility truck; or
 - (B) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
- (b) there was no private use of the motor vehicle during the year of tax and at a time when the benefit was provided other than:
 - (i) work-related travel of the employee; and
 - (ii) other private use of the motor vehicle by the employee or an associate of the employee, being other use that was minor, infrequent and irregular;

the benefit is an exempt benefit in relation to the year of tax.

31. There are two conditions the residual benefit must meet in paragraph 47(6)(a).

32. Firstly it must be the provision or use of a motor vehicle. The definition of a motor vehicle in subsection 136(1) refers to subsection 995-1(1) of the ITAA 1997. Under subsection 995-1(1) of the ITAA 1997, a motor vehicle 'means any motor-powered road vehicle (including a 4 wheel drive vehicle).' A bus is a motor vehicle.

33. ATO Interpretative Decision ATO ID 2001/313 *Fringe benefits tax: exempt residual benefit* outlines the Commissioner's view in relation to use of a bus for the purposes of subsection 47(6). The smartcard provided by the employer allows the employees to travel on the bus and this travel is considered to be the use of the bus. Therefore the first condition is met.

34. Secondly, paragraph 47(6)(a) contextualises the residual benefit as being provided 'in respect of the employment of a current employee'. As the smartcards are provided to employees who must return them to the employer when their employment ends this satisfies the other condition in paragraph 47(6)(a).

35. To satisfy paragraph 47(6)(aa), the motor vehicle must not be a taxi let on hire to the provider, or a car (other than a panel van, utility truck or other road vehicle designed to carry a load of less than 1 tonne and not designed to carry passengers). As a bus is neither a taxi let on hire to the provider or a car, paragraph 47(6)(aa) is satisfied.

36. Paragraph 47(6)(b) requires that in order for the residual benefit to be exempt, any private use must be limited to work-related travel and that any other private use is minor, infrequent and irregular. Subsection 136(1) defines both private use and work-related travel:

private use, in relation to a motor vehicle, in relation to an employee or an associate of an employee, means any use of the motor vehicle by the employee or associate, as the case may be, that is not exclusively in the course of producing assessable income of the employee.

work-related travel, in relation to an employee, means:

- (a) travel by the employee between:
 - (i) the place of residence of the employee; and
 - (ii) the place of employment of the employee or any other place from which or at which the employee performs duties of his or her employment; or
- (b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment.

37. The private use permitted under the declaration is between the employee's places of residence and employment only. This satisfies the definition of work-related travel provided in subsection 136(1). Thus, subparagraph 47(6)(b)(i) is also satisfied.

38. Subparagraph 47(6)(b)(ii) requires that other private use of the motor vehicle by the employee or an associate of the employee be minor, infrequent and irregular. Under the proposed arrangement, other private use of the motor vehicle that is not work-related, or use by anyone other than the employee, is expressly prohibited.

39. As there is no private use of the bus other than for work-related travel during the FBT year and at the time the employee is provided with the residual benefit, subparagraph 47(6)(b)(ii) is satisfied.

40. The residual benefit, which consists of the use of the smartcard for work-related travel on the bus, satisfies subsection 47(6) and is therefore an exempt benefit.

Appendix 2 – Detailed contents list

41. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- FBTAA 1986
- FBTAA 1986 Div 2–11
Subdiv A
- FBTAA 1986 40
- FBTAA 1986 45
- FBTAA 1986 47(6)

- FBTAA 1986 47(6)(a)
- FBTAA 1986 47(6)(aa)
- FBTAA 1986 47(6)(b)
- FBTAA 1986 47(6)(b)(i)
- FBTAA 1986 47(6)(b)(ii)
- FBTAA 1986 136(1)
- ITAA 1997
- ITAA 1997 995-1(1)
- TAA 1953

Other references:

- ATO ID 2001/313

ATO references

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