

CR 2022/23 - Smartgroup Corporation Ltd - use of a travel smartcard for bus travel by employees



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Status: **legally binding**

Class Ruling

Smartgroup Corporation Ltd – use of a travel smartcard for bus travel by employees

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the fringe benefits tax (FBT) consequences of the private use of the travel smartcard by employees provided by their employers.
2. Full details of this scheme are set out in paragraphs 5 to 25 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers/users must form their own view about the product.

Who this Ruling applies to

4. This Ruling applies to you if you are an employer who is a client of Smartgroup Corporation Ltd through its subsidiaries Smartsalary, PBI Benefit Solutions and Advantage (collectively referred to as ‘Smartgroup’) who provides your employees with a travel smartcard (smartcard) enabling them to travel on buses between their place of residence and place of employment.

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When this Ruling applies

5. This Ruling applies from 1 April 2021 to 31 March 2025.

Ruling

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

7. 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.

Scheme

8. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

9. Smartgroup enters into contractual arrangements with state providers of bus travel (State Providers) as agent on behalf of the employers.

10. The State Providers will provide the employers with smartcards which act as an electronic ticketing system. The credits or tickets are purchased by the employer from the State Providers who administer the smartcard system.

11. In order to ride on the bus, the employee uses the smartcard which is loaned to them from their employer as part of a salary sacrifice arrangement. Each use of the smartcard reduces its remaining credit.

12. The employee must sign a declaration which states that the card will only be used for work-related transport, comprising transport between their place of residence and place of employment, as defined in the FBTAA. The smartcard's use cannot be extended to travel that is private in nature that does not meet the definition in the FBTAA.

13. The smartcard can only be operated by the employee to provide transport for that employee between their place of employment and place of residence. Nobody other than the employee is entitled to use the card.

14. The smartcard will only be used for transport by bus. The agreements on the use of the card do not extend to other modes of public transport, such as trams, trains and ferries, even if the card is compatible with their ticketing systems.

15. Upon cessation of employment, the card account is cancelled. Any unused credits are paid out to the employee as gross salary, with PAYG withholding to be deducted.

16. On the employer's behalf, Smartgroup implements a range of reasonable safeguards to ensure that each smartcard is used only by the employee, for travel between home and work.

17. Smartgroup will receive a report on a daily basis from the provider showing any employee who has used the smartcard. It will include a report on employees who used the smartcard on a mode of transport other than a bus, and the employer will be notified of such breaches. In regards to any non-compliance, the cost of that non-compliant travel (including FBT) will be charged and recovered from the employee from pre-tax salary where possible and as the preferred option. However, the alternative is that the costs

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(including FBT) are recovered in after-tax salary. If an employee uses the smartcard for three non-compliant trips, the smartcard account will be cancelled.

18. At the cessation of the benefit, the smartcard account will be reconciled and any unused credit will be returned to the employee as gross salary less PAYG withholding.

19. The smartcard will have an identification number linked to the employer which identifies the employee.

20. Random audits are undertaken to determine whether employees are complying with the company policy. If there are any discrepancies, the employee is monitored and the smartcard may be revoked if the employer determines the smartcard is not being used correctly.

21. In the event that unauthorised use of the smartcard is identified, the employee is required to repay the employer for the benefit they received.

22. The benefit is only available to employees who enter into the arrangement. No reimbursement will be given to employees who obtain the smartcard through directly liaising with the travel provider.

23. Each employee will only be issued with a single active smartcard.

24. In the event that a smartcard is lost, stolen or there is evidence of misuse, the transport provider will cancel the smartcard at the request of Smartgroup, on behalf of the employer.

25. The smartcard is suspended if an employee is on a leave of absence, and is reinstated once their leave of absence finishes and they need to travel to and from their place of residence and employment.

Commissioner of Taxation

23 March 2022

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Appendix – Explanation

❶ *This Explanation 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.*

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Is a residual benefit provided?

26. Section 45 provides that a benefit will be 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.

27. 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'. Therefore, a bus does not fall within the definition of 'car' and so is not covered by Division 2.

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

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.

29. 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.

30. Division 11 deals with property fringe benefits, and with respect to the definition of 'provide' in relation to property, there has been no disposal of the legal ownership or beneficial interest of the bus. Therefore, the bus has not been provided by the employer, for the purposes of Division 11.

31. Therefore, the benefit provided by the employer does not fall within any of the provisions of Subdivision A of Divisions 2 to 11 and, as such, is a residual benefit as per section 45.

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Is the residual benefit exempt from fringe benefits tax?

32. Subsection 47(6) outlines the conditions that must be met for a residual benefit to qualify for an exemption from FBT, 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 vehicle used for taxi travel (other than a limousine) 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.

33. As discussed in paragraph 30 of this Ruling, the bus was not provided to the employee. ATO Interpretative Decision ATO ID 2001/313 *Fringe benefits tax: exempt residual benefit* outlines the Commissioner's view on the employee's travel on a bus. It is considered to be the use of a bus as the smartcard provided by the employer allows the employee to use the bus.

34. 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 is defined as 'any motor-powered road vehicle (including a 4 wheel drive vehicle)'. Therefore, a bus is a motor vehicle. Thus, the employees use of the bus satisfies one of the conditions in paragraph 47(6)(a).

35. Paragraph 47(6)(a) contextualises the residual benefit as being provided 'in respect of the employment of a current employee'. Under the declaration signed by the employee, the smartcard is cancelled when their employment ends. As such, this satisfies the other condition the residual benefit must meet in order to satisfy paragraph 47(6)(a).

36. 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.

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37. Paragraph 47(6)(b) requires that in order for the residual benefit to be exempted, 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.

38. 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.

39. 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, whether infrequent, minor or irregular.

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

41. 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 exempt.

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References

Related Rulings/Determinations:

TR 2006/10

Previous Rulings/Determinations:

CR 2016/58

Legislative references:

- FBTAA 1986 Pt III Div 2
- FBTAA 1986 Pt III Div 2 Subdiv A
- FBTAA 1986 Pt III Div 3 Subdiv A
- FBTAA 1986 Pt III Div 4 Subdiv A
- FBTAA 1986 Pt III Div 5 Subdiv A
- FBTAA 1986 Pt III Div 6 Subdiv A
- FBTAA 1986 Pt III Div 7 Subdiv A
- FBTAA 1986 Pt III Div 8 Subdiv A
- FBTAA 1986 Pt III Div 9 Subdiv A
- FBTAA 1986 Pt III Div 10 Subdiv A

- FBTAA 1986 Pt III Div 11
- FBTAA 1986 Pt III Div 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 995-1(1)
- TAA 1953

Other references:

- ATO ID 2001/313

ATO references

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