


# ***CR 2024/62 - FleetPartners Group Limited, FleetPlus Pty Limited and Fleet Partners Pty Limited - employer clients' use of travel smartcard***

 This cover sheet is provided for information only. It does not form part of *CR 2024/62 - FleetPartners Group Limited, FleetPlus Pty Limited and Fleet Partners Pty Limited - employer clients' use of travel smartcard*



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## Class Ruling

# FleetPartners Group Limited, FleetPlus Pty Limited and Fleet Partners Pty Limited – employer clients’ use of travel smartcard

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### **📌 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 our opinion on the way in which the relevant provisions identified in paragraph 2 of this Ruling apply to the defined class of entities, who take part in the scheme to which this Ruling relates.
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.
3. All legislative references in this Ruling are to the FBTAA, unless otherwise indicated.

### **Who this Ruling applies to**

4. The class of entities to which this Ruling applies is employers who are clients of FleetPartners Group Limited, FleetPlus Pty Limited and Fleet Partners Pty Limited (FleetPartners Group) that provide a smartcard to their employees to facilitate travel on buses between the employees’ places of residence and their places of employment.
5. 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 10 to 19 of this Ruling.

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6. 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 us because the scheme entered into is not the scheme on which we have ruled, and
- may be withdrawn or modified.

### **When this Ruling applies**

7. This Ruling applies from 1 April 2023 to 31 March 2029. 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 *Public Rulings*).

## **Ruling**

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

9. The residual benefit that arises from the 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 place of work.

## **Scheme**

10. 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.

11. FleetPartners Group has entered into contractual arrangements with state-based transport authorities in respect of bus travel on behalf of its employer clients.

12. The transport authority provides the employer with a travel smart card (card) which acts as an electronic fare collection system.

13. The card is provided as part of a salary sacrificing agreement. Participating employees must sign a declaration acknowledging the terms and conditions of use of the card which states that the card will only be used for work-related transport comprising transport between the employee's place of residence and their place of employment. The card must only be used for transport by bus between the employee's place of employment and place of residence.

14. The card can only be used by an employee when they are a current employee. Employees are required to return the card if they are no longer employed or no longer wish to participate in the salary packaging arrangement. Further, if an employee is found to not abide by the conditions in paragraph 13 of this Ruling, the card and access will be withdrawn and the card cancelled.

15. The cards are non-transferable and are registered in the employee's name (if possible, the employee's name will be printed on the card).

16. The transport authorities will provide periodic reports to FleetPartners Group detailing each employee's travel undertaken on their card. FleetPartners Group will audit the reports to determine if any travel has occurred which is not considered authorised

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travel. If any unauthorised use of the card is identified, the employee will be required to repay the employer for any unauthorised benefits received.

17. FleetPartners Group will also issue email and telephone warnings to the employee and the employer where repetitious unauthorised travel is identified.

18. If a card is lost or stolen, the employee is required to notify the relevant transport authority to cancel the old card and issue a replacement.

19. If the employee obtains the card through liaising directly with the travel provider, no reimbursement will be given.

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**Commissioner of Taxation**

2 October 2024

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## Appendix – Explanation

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**ⓘ** *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?

20. 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 10A are not relevant to this scheme. Division 2 and Division 11 may be relevant to this scheme.

21. 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 motorcycle 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.

22. 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.

23. 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.

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

25. 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.

### Is the residual benefit exempt from fringe benefits tax?

26. 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;

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- (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.

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

28. 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.

29. ATO Interpretative Decision ATO ID 2001/313 *Fringe benefits tax: exempt residual benefit* outlines the Commissioner's view in relation to the use of a bus for the purposes of subsection 47(6). The card 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.

30. Secondly, paragraph 47(6)(a) contextualises the residual benefit as being provided 'in respect of the employment of a current employee'. As the cards are provided to employees who must return them to the employer when their employment ends, is terminated, or no longer wish to participate in the arrangement this satisfies the other condition in paragraph 47(6)(a).

31. To satisfy paragraph 47(6)(aa), the motor vehicle must not be a vehicle used for taxi travel (other than a limousine) 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 vehicle used for taxi travel (other than a limousine) to the provider or a car, paragraph 47(6)(aa) is satisfied.

32. 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

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- (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.

33. The private use permitted under the declaration is between the employee's place 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.

34. 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. FleetPartners Group monitors the use of the card and where an employee is found to not have abided to the conditions which includes unauthorised use, the card will be withdrawn, as well as access to the arrangement. The card will then be cancelled to prevent further usage by the employee.

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

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

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## References

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Related Rulings/Determinations:

TR 2006/10

- FBTA 47(6)(a)
- FBTA 47(6)(aa)
- FBTA 47(6)(b)
- FBTA 47(6)(b)(i)
- FBTA 47(6)(b)(ii)
- FBTA 136(1)
- ITAA 1997 995-1(1)

*Previous Rulings:*

CR 2018/13

*Legislative references:*

- FBTA Div 2 Subdiv A
- FBTA Div 11 Subdiv A
- FBTA 40
- FBTA 45
- FBTA 47(6)

*Other references:*

- ATO ID 2001/313
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ATO references

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