

CR 2015/111 - Fringe benefits tax: corporate clients of McMillan Shakespeare Limited and its subsidiaries (McMillan Shakespeare) who participate in McMillan Shakespeare's bus travel benefit scheme

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! This document has changed over time. This is a consolidated version of the ruling which was published on *16 August 2017*



Class Ruling

Fringe benefits tax: corporate clients of McMillan Shakespeare Limited and its subsidiaries (McMillan Shakespeare) who participate in McMillan Shakespeare's bus travel benefit scheme

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	6
Scheme	7
Ruling	24
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	26
Appendix 2:	
Detailed contents list	43

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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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<https://www.ato.gov.au/law>) to check its currency and to view the details of all changes.]

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
- subsection 136(1) of the FBTAA
- section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of entities

3. The class of entities to which this Ruling applies is employers who are clients of McMillan Shakespeare Limited and its subsidiaries that provide their employees with a smart-card enabling them to travel on buses only between their place of residence and place 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 23 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 the 16 December 2015. 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. McMillan Shakespeare Limited enters 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 with travel smart-cards which act as an electronic ticketing system. The credits or tickets are purchased by the employer from the State Providers who administer the smart-card system.

10. In order to ride on the bus, the employee uses the smart-card which is loaned to them from their employer as part of a salary sacrifice arrangement.

11. 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 smart-card's use cannot be extended to travel that is private in nature that does not meet the definition in the FBTAA.

12. The smart-card 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.

13. The smart-card will only be used for transport by bus. The use of the card cannot be extended to other modes of public transport, such as trams, trains and ferries, even if the card is compatible with their ticketing systems.

14. The smart-card issued by the State Providers remains the property of the employer. Upon cessation of employment, the card must be returned to the employer and any credits/tickets are removed from the card. Any unused credits are paid out to the employee as gross salary, with PAYG withholding to be deducted.

15. On the employer's behalf, McMillan Shakespeare Limited implements a range of safeguards, ensuring that each smart-card is used only by the employee, and only for travel between home and work.

16. Travel undertaken by employees is to be reconciled annually by McMillan Shakespeare Limited, on behalf of the employer.

17. The smart-card will have an identification number linked to the employer which identifies the employee.

18. 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 card may be revoked if the employer determines the smart-card is not being used correctly.

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

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

21. Each employee will only be issued with a single active smart-card.

22. In the event that a smart-card is lost, stolen, or there is evidence of misuse, the transport provider will cancel the card at the request of McMillan Shakespeare Limited, on behalf of the employer.

23. The smart-card 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 places of residence and employment.

Ruling

24. The employee's use of the travel smart-card provided by the employer is a residual benefit as per section 45 of the FBTAA.

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

Commissioner of Taxation

16 December 2015

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.*

26. Subsection 47(6) of the FBTA outlines the conditions that must be met for a residual benefit to qualify for an exemption from Fringe Benefits Tax (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 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.

27. Section 45 of the FBTA 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.

28. Division 2 applies to car fringe benefits. The definition of a car in subsection 136(1) of the FBTA refers to section 995-1 of the ITAA 1997. Under section 995-1 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.

29. 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.'

30. The definition of 'provide' in subsection 136(1) of the FBTA 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.

31. 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.

32. 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.

33. The residual benefit must meet two conditions in order to satisfy paragraph 47(6)(a).

34. As discussed in paragraph 31 of this ruling, the bus was not provided to the employee. ATO Interpretive Decision ATO ID 2001/313 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 smart-card provided by the employer allows the employee to use the bus. This satisfies one of the conditions in paragraph 47(6)(a) of the FBTA.

35. The definition of a motor vehicle in subsection 136(1) of the FBTA refers to section 995-1 of the ITAA 1997. Under section 995-1 of the ITAA 1997, a motor vehicle 'means any motor-powered road vehicle (including a 4 wheel drive vehicle).' Therefore, a bus is a motor vehicle.

36. 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 smart-card must be returned to the employer when their employment ends. As such, this satisfies the other condition the residual benefit must meet in order to satisfy paragraph 47(6)(a).

37. 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.

38. 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) of the FBTAA 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.

39. 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) of the FBTAA. Thus, subparagraph 47(6)(b)(i) of the FBTAA is also satisfied.

40. Subparagraph 47(6)(b)(ii) of the FBTAA 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.

41. 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) of the FBTAA.

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

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	6
Scheme	7
Ruling	24
Appendix 1 – Explanation	26
Appendix 2 – Detailed contents list	43

References

<i>Previous draft:</i>	- FBTAA 1986 47(6)(aa)
Not previously issued as a draft	- FBTAA 1986 47(6)(b)
	- FBTAA 1986 47(6)(b)(i)
<i>Related Rulings/Determinations:</i>	- FBTAA 1986 47(6)(b)(ii)
TR 2006/10	- FBTAA 1986 136(1)
	- ITAA 1997
<i>Legislative references:</i>	- ITAA 1997 995-1
- FBTAA 1986	- TAA 1953
- FBTAA 1986 45	
- FBTAA 1986 47(6)	<i>Other references:</i>
- FBTAA 1986 47(6)(a)	- ATO ID 2001/313

ATO references

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