


# ***CR 2021/17 - Shante Pty. Ltd. - use of an electronic travel smartcard for public bus transport by an employee***

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## Class Ruling

# Shante Pty. Ltd. – use of an electronic travel smartcard for public bus transport by an employee

### **📌 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 tax consequences for employer clients of Shante Pty. Ltd., trading as National Salary Packaging (NSP), who provide their employees with an electronic travel smartcard (smartcard) for use on public bus transport.
2. Full details of this scheme are set out in paragraphs 8 to 25 of this Ruling.
3. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986* unless otherwise indicated.

**Note:** By issuing this Ruling, the ATO is not endorsing this product. Potential purchasers or 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 NSP that provides a smartcard to your employees to facilitate travel on buses between your employees' places of residence and places of employment.

### When this Ruling applies

5. This Ruling applies from 1 April 2020 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. Information referenced is as follows:

- Draft recipient created tax invoice agreement
- Agreement to authorise issue of recipient created tax invoices from November 2016
- Department of Transport and Main Roads (DTMR) *go* Bus Travel Benefit – System Access Agreement (Salary Packaging Provider)
- Direct Debit Request
- NSP Bus Travel Benefit FAQ.

10. NSP enters into contractual arrangements with state providers of bus travel (the DTMR) as agent on behalf of the employers (Agreement to authorise issue of recipient created tax invoices from November 2016).

11. The DTMR provide the employers (through NSP) with smartcards (DTMR *go* Bus Travel Benefit) which act as an electronic ticketing fare-collection system.

12. Employees will enter into salary sacrifice arrangements with their employer. Amounts of salary sacrificed by employees will be paid by employers to NSP who will then manage the funds and pay to the DTMR. The funds will be used to top up the employee's smartcard in order to pay for travel.

13. NSP, as agent for the employer, will provide the smartcards to the employees but they will remain held by the employer. Each smartcard will have an identification number which is linked to and identifies the employee.

14. The smartcard is non-transferable and only for travel between the employee's place of residence and place of employment. Each employee will be issued with only one smartcard.

15. 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).

16. The NSP Bus Travel Benefit FAQ includes the following information:

What happens if my *go* Bus Travel Benefit card is used for invalid travel?

As part of your salary packaging arrangement, the *go* Bus Travel Benefit card can only be used for travel to and from work on any TransLink bus within South East Queensland. Any form of travel other than this is considered to be invalid. You will receive a notification if invalid travel occurs, outlining what's required.

Where can I use my *go* Bus Travel Benefit card?

Your card can only be used for bus travel expenses to and from work, throughout South East Queensland on the TransLink bus network.

17. The declarations from the employee will also include acknowledgment that the smartcard will be returned to NSP or their employer when employment ceases.

18. The FAQ includes the following information:

What happens if I cease packaging?

Any available funds still remaining on your *go* Bus Travel Benefit card will be returned to your payroll to be taxed and returned to you as salary.

19. NSP will conduct a range of audits to ensure that the employee only uses the smartcard for bus travel between home and work. Within the declaration of use, the employee must state their work locations, home location, bus route number or reference, and the number of zones travelled. NSP will notify employees via email or direct phone call after the first and second offences as a reminder of program conditions. The employee will be warned at the third misuse of the smartcard and the card is terminated effective immediately.

20. Within the guidelines, any misuse of the smartcard by the employee will require the employee to repay to the employer the cost of the misused benefit.

21. The DTMR will provide NSP with access to the details of smartcard usage reports. These reports can be accessed at any time by NSP and can be presented within 24 hours to the employers.

22. When the employee terminates employment, their smartcard is required to be returned to NSP or their employer. Where there is a positive balance of funds, any monies on the smartcard will be returned to the employer.

23. 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 pay as you go withholding.

24. When an employee goes on extended leave (eight weeks or more), the employer will advise NSP who will instruct the DTMR to suspend the smartcard.

25. Misplaced or stolen smartcards will be cancelled and the balance of the funds transferred to a replacement smartcard.

**Appendix – Explanation**

**ⓘ** *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 is a residual benefit if it is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive) of Part III. Divisions 3 to 10 are not relevant to this scheme. Divisions 2 and 11 may be relevant to this scheme.

27. Division 2 includes section 7 which is applicable to car fringe benefits. The definition of '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.

28. 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.

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. 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.

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

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

34. 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.

35. 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 use of the bus. Therefore, the first condition is met.

36. Secondly, paragraph 47(6)(a) states that the residual benefit is being provided 'in respect of the employment of a current employee'. As the smartcards are provided to employees who must return them to NSP or their employer when their employment ceases, this satisfies the other condition in 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 nor a car, paragraph 47(6)(aa) is satisfied.

38. 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 and work-related travel:

**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. 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 and place of employment.

40. The FAQ confirms that any use of the smartcard other than for travel to and from work will be considered invalid.

41. NSP will also conduct a range of audits to ensure that the employee only uses the smartcard for bus travel between home and work.

42. 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.

43. 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.

**References***Previous draft:*

Not previously issued as a draft

*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
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- FBTAA 1986 7
- 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)(ii)
- FBTAA 1986 136(1)
- ITAA 1997 995-1(1)
- TAA 1953

*Other references:*

- ATO ID 2001/313

## ATO references

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