


# ***PR 2023/26 - Luxury Escapes Business Traveller Program***

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Status: **legally binding**

## Product Ruling

# Luxury Escapes Business Traveller Program

### **1 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.

#### **Terms of use of this Ruling**

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

#### **Changes in the law**

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Project are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

#### **No guarantee of commercial success**

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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### **What this Ruling is about**

1. This Ruling sets out the fringe benefits tax and income tax consequences for an employer (Employer) that enters into the Luxury Escapes Business Traveller Program

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(LE Business Traveller Program) offered by Luxury Escapes Business Traveller Pty Ltd (Luxury Escapes).

2. All legislative references in this Ruling are to the *Fringe Benefits Tax Assessment Act 1986*, unless otherwise indicated. Terms which are defined in the draft User Business Agreement referred to in paragraph 10 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax treatment of any Fees payable by the Employer under the LE Business Traveller Program
- the tax consequences for an employee of the Employer (Employee) in connection with the LE Business Traveller Program, and
- whether any fringe benefit provided by the Employer under the LE Business Traveller Program will be an exempt benefit under section 58P.

### Who this Ruling applies to

4. This Ruling applies to you if you, as the Employer, enter into the scheme described in paragraphs 10 to 20 of this Ruling on or after 13 December 2023 and on or before 30 June 2026.

5. This Ruling does not apply to you if you:

- enter into the scheme described in paragraphs 10 to 20 of this Ruling before 13 December 2023 or after 30 June 2026
- are a non-resident for Australian tax purposes, or
- are an Employee with a User Account registered in connection with the LE Business Traveller Program.

### Date of effect

6. This Ruling applies from 13 December 2023, the date it was published, to the Employers specified in paragraph 4 of this Ruling that enter into the scheme from 13 December 2023 until 30 June 2026.

7. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 10 to 20 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

### Ruling

8. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 9 of this Ruling:

- (a) Subject to the application of section 20A, the payment by the Employer to Luxury Escapes for any travel costs incurred by the Employee under the LE Business Traveller Program will be an expense payment fringe benefit under subsection 136(1).

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- (b) Subject to the application of section 58P, the payment by the Employer to Luxury Escapes for any Luxury Escapes Credits earned by the Employee under the LE Business Traveller Program will be an expense payment fringe benefit under subsection 136(1).
- (c) The payment by the Employer to Luxury Escapes for any travel costs incurred by the Employee, or any Luxury Escapes Credits earned by the Employee, under the LE Business Traveller Program will be deductible to the Employer under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) in the income year incurred.
- (d) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to the Employer.
- (e) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provision of section 67 will not apply to the Employer.

### Assumptions

9. This Ruling is made on the basis of the following necessary assumptions:
- (a) The Employer is an Australian resident for tax purposes.
  - (b) The travel costs paid for by the Employer to Luxury Escapes under the LE Business Traveller Program have a sufficient or material connection to the Employee's employment.
  - (c) The Employer pays Luxury Escapes for the Luxury Escapes Credits to retain, motivate and reward key employees of the Employer.
  - (d) No expense payment fringe benefit provided by the Employer under the LE Business Traveller Program is an 'in-house fringe benefit' as defined under subsection 136(1).
  - (e) The scheme will be executed in the manner described in the Scheme section of this Ruling and scheme documentation referred to in paragraph 10 of this Ruling.
  - (f) All dealings between the Employer, the Employee and Luxury Escapes will be at arm's length.

### Scheme

10. The scheme is identified and described in the following:
- application for a product ruling as constituted by information and documentation received on 5 September 2023, and
  - draft User Business Agreement between Luxury Escapes and the Employer received on 5 September 2023.

**Note:** Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under freedom of information legislation.

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11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an Employer, or any associate of an Employer, will be a party to which are a part of the scheme.

12. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

### **Overview of scheme**

13. Luxury Escapes carries on an online travel agency business via a global luxury travel platform, offering products and services such as hotels, resorts, tours, flights, experiences and travel insurance provided for by third-party suppliers.

14. The LE Business Traveller Program is offered by Luxury Escapes to Employers, providing them the ability to set a travel budget in relation to business travel conducted by their Employees, and for those Employees to earn Luxury Escapes Credits in their personal Luxury Escapes accounts.

15. The LE Business Traveller Program works as follows:

- The Employer enters into the User Business Agreement with Luxury Escapes, registers a Business Account on the Luxury Escapes website and then invites its Employees to create User Accounts linked to that Business Account.
- Each Employee that has created a User Account creates a separate, but connected, personal account with Luxury Escapes.
- The Employer sets travel budgets for certain sectors (for example, flights and accommodation).
- The Employer sets a percentage of any spend below the budget which the Employer wishes to share with the relevant Employee making the booking in the form of Luxury Escapes Credits.
- Where the Employee uses their User Account to make the booking and the booking is below the budget set by the Employer, the Employee receives Luxury Escapes Credits in their personal account following the conclusion of the booking.
- The Employer pays Luxury Escapes for the Luxury Escapes Credits earned by the Employee at the time the booking is made, as well as for the Employee's travel costs.

16. The amount of Luxury Escapes Credits earned by the Employee is a percentage (the percentage set by the Employer) of the spend below the budget limit set by the Employer.

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### **Example – calculation of Luxury Escapes Credits**

17. *Company A (an employer) is a Business Account Holder which sets a limit of \$300 per night for domestic business travel accommodation and sets the employee credit earning at 50% of the spend below budget.*

18. *Athena (an employee of Company A with a User Account linked to Company A's Business Account, as well as a personal account) books a \$200 per night hotel for 4 nights.*

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19. *As a result, Athena has spent \$400 below the allocated accommodation budget for her business trip and earns \$200 worth of Luxury Escapes Credits.*

20. *Company A is charged \$800 for Athena's accommodation choice and is charged \$200 (being 50% of the \$400 saving) for the \$200 worth of Luxury Escapes Credits provided to Athena's personal Luxury Escapes account.*

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**Commissioner of Taxation**

13 December 2023

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## Appendix – Explanation

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**ⓘ** *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.*

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### **Fringe benefits tax consequences for the Employer under the Luxury Escapes Business Traveller Program**

21. Expense payment benefit is defined in subsection 136(1) by reference to a benefit referred to in section 20. Section 20 provides that an expense payment benefit is a payment made by a person (the provider) in discharge of the whole or part of an obligation of another person (the recipient) to pay a third person in respect of an amount of expenditure incurred by the recipient, or the reimbursement by the provider of the recipient in whole or part in respect of an amount of expenditure incurred by the recipient.

22. Expense payment fringe benefit is defined in subsection 136(1) to mean a fringe benefit that is an expense payment benefit. The definition of a fringe benefit is defined in subsection 136(1) and generally relates to a benefit:

- provided to an employee, or an associate of an employee, by an employer, an associate of the employer or another person (referred to as the arranger) under an arrangement involving the employer or an associate
- provided in respect of the employment of the employee, and
- that is not excluded from being a fringe benefit for reasons which may include it being an exempt benefit.

23. Where the Employee (as the recipient for the purposes of section 20) incurs travel costs and expenditure in respect of Luxury Escapes Credits and the Employer (as the provider for the purposes of section 20), under the terms of the User Business Agreement, pays Luxury Escapes directly for these expenses, such payments will be an expense payment benefit provided to the Employee by the Employer in respect of the employment of the Employee.

24. The payment by the Employer to Luxury Escapes for the Employee's travel costs and the Luxury Escapes Credits will therefore constitute an expense payment fringe benefit, subject to their exclusion as a fringe benefit (by virtue of being an exempt benefit).

25. An expense payment fringe benefit covered by a no-private-use declaration in the approved form is an exempt benefit under section 20A. An employer may make a no-private-use declaration covering all expense payment fringe benefits in an FBT year for which the taxable value is nil.

26. Thus, the no-private-use declaration could be used by the Employer to cover expense payment fringe benefits relating to its payment of the Employee's travel costs for which the Employee could have claimed an income tax deduction (had the travel costs not been paid by the Employer).

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27. Section 58P provides that a benefit is exempt if it is considered to be a minor benefit. Broadly speaking, the minor benefits exemption exempts benefits if the value of the benefit is less than \$300 and it is considered unreasonable to treat the benefit as a fringe benefit having regard to the specified criteria in paragraph 58P(1)(f):

Where:

- (a) a benefit (in this section called a **minor benefit**) is provided in, or in respect of, a year of tax (in this section called the **current year of tax**) in respect of the employment of an employee of an employer;
- ...
- (e) the notional taxable value of the minor benefit in relation to the current year of tax is less than \$300; and
- (f) having regard to:
  - (i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:
    - (A) the minor benefit; or
    - (B) benefits provided in connection with the provision of the minor benefit;
 have been or can reasonably be expected to be provided;
  - (ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;
  - (iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;
  - (iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:
    - (A) if the minor benefit is not a car benefit – the minor benefit; and
    - (B) if there are any associated benefits that are not car benefits – those associated benefits; and
  - (v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:
    - (A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and
    - (B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

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

28. Taxation Ruling TR 2007/12 *Fringe benefits tax: minor benefits* contains comprehensive guidance on the application of the minor benefit exemption in section 58P and confirms that the section does not apply to exempt all benefits that have a notional taxable value of less than \$300. TR 2007/12 provides that in considering the application of the exemption under section 58P it is necessary to look to the nature of the benefit



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provided and give due weight to each of the criteria in paragraph 58P(1)(f). The weight given to each criterion will also vary depending on the circumstances surrounding the provision of each benefit.

29. In relation to the criterion under subparagraph 58P(1)(f)(i), paragraph 22 of TR 2007/12 relevantly notes:

In applying the 'infrequency and irregularity' criterion, it is not appropriate to stipulate the maximum number of times associated benefits that are identical or similar to a minor benefit, or benefits in connection with the minor benefit, can be provided before the criterion is not met. However, the more often and regularly those benefits are provided, the less likely it is that this criterion would be met.

30. In relation to the criterion under subparagraph 58P(1)(f)(ii), paragraph 224 of TR 2007/12 relevantly notes that even if the value of each benefit is below the minor benefits threshold, the sum of the values of the benefits provided, being identical benefits in the current and previous year of tax and those that are reasonably expected to be provided in the future, are all taken into consideration. In the context of expense payment benefits provided by the Employer in respect of its payment for the Luxury Escapes Credits, the sum of the values of the benefits provided will vary on a case-by-case basis and can be influenced by factors such as the travel budget and the credit earning percentage set by the Employer, the choice of accommodation, flight or other made by the Employee and the length of the Employee's stay.

31. The Employer must therefore give due consideration to the 5 criteria stipulated in paragraph 58P(1)(f) against the individual facts and circumstances of each expense payment benefit it provides in respect of its payment for Luxury Escapes Credits.

#### **Payments for Luxury Escapes Credits deductible**

32. Section 8-1 of the ITAA 1997 allows a deduction for any loss or outgoing to the extent that it is incurred in gaining or producing assessable income or it is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income, provided that the loss or outgoing is not of a capital, private or domestic nature.

33. An outgoing incurred by a business will be necessarily incurred where, in the circumstances, it is reasonably capable of being seen as desirable or appropriate from the point of view of the pursuit of the business ends of the business being carried on for the purpose of earning assessable income (see *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia* [1980] FCA 180).

34. Where the Employer pays Luxury Escapes for any travel costs incurred by the Employee, or any Luxury Escapes Credits earned by the Employee, under the LE Business Traveller Program, the payment will constitute an outgoing which is appropriate from the point of view of the pursuit of the business ends of the Employer's business and therefore necessarily incurred in carrying on that business.

35. The payment necessarily incurred by the Employer to pay for travel costs or Luxury Escapes Credits in the course of carrying on its business is not of a capital, private or domestic nature and is deductible under section 8-1 of the ITAA 1997 in the income year the payment is made to Luxury Escapes (that is, at the time it is necessarily incurred).

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## References

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*Related Rulings/Determinations:*

TR 2007/12

- FBTA 1986 136(1)
- ITAA 1936 Pt IVA
- ITAA 1997 8-1

*Legislative references:*

- FBTA 1986 20
- FBTA 1986 20A
- FBTA 1986 58P
- FBTA 1986 58P(1)(f)
- FBTA 1986 58P(1)(f)(i)
- FBTA 1986 58P(1)(f)(ii)
- FBTA 1986 67

*Cases relied on:*

- *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia* [1980] FCA 180; 80 ATC 4542; 11 ATR 276; 49 FLR 183; 33 ALR 213

ATO references

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