



Practical Compliance Guideline compendium – PCG 2026/3

❶ Relying on this Compendium

This Compendium of comments summarises and provides responses to submissions received during public and targeted consultation on draft Practical Compliance Guideline PCG 2025/D7 *Application of section 26-50 of the Income Tax Assessment Act 1997 to holiday homes that you also rent out – ATO Compliance approach*. It is intended to promote transparency and explain how stakeholder feedback was considered in finalising the document only.

It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Consultation period: 12 November 2025 to 30 January 2026

We thank all submitters for their time and contributions.

Summary of issues raised and responses

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Issue 1 – the draft Guideline risks forcing owners to choose between exclusive commercial use or denial of deductions

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

The draft Guideline does not distinguish between a:

- lifestyle asset occasionally rented, and
- genuine income-producing short-term rental accommodation property with limited, well documented private use.

It effectively forces taxpayers to choose between exclusive commercial use or complete denial of ownership deductions. It risks converting section 26-50 into an all or nothing test, where the presence of personal use may result in full denial of ownership-related deductions, rather than allowing long standing and appropriate apportionment.

Further, it imposes a double standard in income versus deduction where taxpayers are required to declare all income but are required to apportion or deny deductions genuinely incurred in earning that income. This departs from general tax policy.

ATO response

Section 26-50 is an integrity provision which operates independently of section 8-1 and is intended to prevent the tax system from subsidising private holidays or recreation.

Private minor usage will not trigger the operation of section 26-50, only situations where the property is a holiday home and is not used (or held for use) mainly to derive rent. Where section 26-50 does not apply, fair and reasonable apportionment under section 8-1 still applies.

Outcome

No change

Issue 2 – ATO's interpretation of section 26-50 is overly broad

Paragraph or section of draft product

Example 4

Issue raised

The draft Guideline suggests that even a small apartment in the Melbourne central business district may be characterised as a leisure facility if it is used by the owners during holidays. This approach is difficult to reconcile with the Explanatory Memorandum to the Income Tax Assessment Bill (No. 2) 1974 which references former section 51AB of the *Income Tax Assessment Act 1936*, which provides examples of assets that are inherently leisure-oriented in nature, such as seaside cottages, squash courts, swimming pools, tennis courts, bowling greens, golf courses, ski runs, fishing shacks and holiday cottages.

The structure of the statutory exceptions including paragraph 26-50(3)(a) supports the view that the test is intended to be objective. The Explanatory Memorandum to the Income Tax Assessment Bill (No. 2) 1974 (at page 42) explains that an exception would be required, for example, for an owner of a squash court who is in the business of hiring it out. If a subjective test were intended, such an exception would arguably be unnecessary, as a purely commercial asset that is never used for the owner's recreation would not constitute a leisure facility in the first place.

ATO response

Leisure facility is broadly defined and includes any use for holidays or recreation. Objectively, a property in a central business district that is used by its owners for their holidays or recreation is a leisure facility.

The exception in section 26-50 does not depend on the owner's subjective intention. Rather, it involves an objective, qualitative analysis of the property's use (as explained in paragraphs 37 to 43 of Taxation Ruling TR 2026/1 *Income tax: rental property income and deductions for individuals who are not in business*).

Outcome

No change

Issue 3 – interaction with the Sharing Economy Reporting Regime

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

A submission indicated strong support for the Sharing Economy Reporting Regime – with short-term rental accommodation income now subject to enhanced third-party reporting, providing the ATO with objective data on bookings, income and availability.

In this context, comments received requested that compliance approaches should place greater weight on verifiable commercial indicators, rather than subjective assumptions about private or recreational use.

ATO response

Paragraph 40 of TR 2026/1 provides that both a quantitative assessment and qualitative evaluation of all the relevant facts and circumstances is needed to determine objectively, the main use of the property.

Commercial indicators, such as those reported through the Sharing Economy Reporting Regime may be considered as part of this assessment.

Outcome

No change

Issue 4 – need certainty on the application of section 26-50

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

Related to issues raised in respect of draft Taxation Ruling TR 2025/D1 *Income tax: rental property income and deductions for individuals who are not in business*, commenters raised the following issues in relation to the meaning of used (or held for use) ‘mainly’ to derive rent:

- defining ‘mainly’
- explaining how to determine ‘peak period’
- providing a ‘bright-line’ test focusing on the use of the holiday home during peak periods as peak periods seems to be the most relevant factor when considering the main use of the property.

For example, requesting that the Commissioner will not look to apply section 26-50 if the taxpayer rents the holiday house or makes it available for rent on commercial terms for more than half the peak period.

ATO response

In the context of section 26-50, the term ‘mainly’ requires an objective qualitative assessment of all factors relevant to the use and holding of the property. No single factor is determinative, and a simple quantitative or bright-line test is not appropriate.

In TR 2026/1:

- paragraphs 38 to 40 and 105 to 112 clarify that ‘mainly’ means chiefly or principally, and makes it clear that that the test requires a qualitative assessment
- paragraph 113 clarifies ‘peak seasonal demand’.

Outcome

No change

Issue 5 – clarity on how to determine if taxpayer is maximising income-producing use of holiday home under short-term rental**Paragraph or section of draft product**

Not applicable –relevant to document scope

Issue raised

The submission suggests that an analysis should be allowed to compare rental income levels received via short-term rental as against a benchmark long-term rental in determining if rental income is maximised. This would be in addition to the duration or days available for rental versus days of personal use during the year.

ATO response

Section 26-50 applies to the use of a property or how it is held for use. The rental income received is a factor that assists with understanding usage, but income levels alone would not be determinative as how the property is used (or held for use).

Outcome

No change

Issue 6 – the Guideline should include short-term rental accommodation examples reflecting jurisdictional restrictions**Paragraph or section of draft product**

Not applicable – relevant to document structure

Issue raised

In some jurisdictions, short-term rental accommodation properties are subject to regulatory annual night caps, commonly 180 nights per year. These caps materially constrain availability irrespective of owner intent and must be taken into account when assessing rental activity.

ATO response

State-based taxes and regulatory restrictions may form part of the overall factual matrix but do not alter the statutory test in section 26-50.

In the final Guideline, Example 4 has been added to illustrate the compliance approach to the application of section 26-50 in a situation where there is limited personal use with high occupancy of the holiday home during peak periods, combined with short-term rental restrictions.

Outcome

Position amended

Issue 7 – personal use during school holidays does not necessarily equate to prioritising personal use during peak demand

Paragraph or section of draft product

Not applicable – relevant to document structure

Issue raised

The submission provides that peak short-term rental accommodation demand is not uniform across Australia. For example, in regional New South Wales areas such as the Blue Mountains, Hawkesbury region and the Snowy Mountains, peak demand commonly occurs between April and October, not during summer school holidays.

ATO response

The application of the exception in paragraph 26-50(3)(ii) depends on whether the property is mainly used or held for use to produce assessable income in the nature of rents, lease premiums, licence fees or similar charges, assessed objectively.

TR 2026/1 acknowledges:

- at paragraphs 111 to 113, that the analysis requires consideration of peak periods
- at paragraph 113, that ‘peak seasonal demand’ for a holiday home varies according to its location and when it is desirable as a destination for holidays or recreation.

In the final Guideline, Table 1 and paragraphs 24, 42 and 56 clarify that ‘peak holiday season’ covers times when a property is desirable as a destination for holidays or recreation, such as during school holidays, public holidays or peak seasonal demand periods.

Outcome

Position amended

Issue 8 – clarity around the risk zones and further examples

Paragraph or section of draft product

Green zone factors and arrangements

Issue raised

Submissions provided that the factors and examples for the risk zones are either extreme (so it is obvious whether section 26-50 applies – as per green and red zone) or do not indicate what the Commissioner's position is as to the application of section 26-50.

Submissions requested that there should be more green zone and amber zone examples.

Comments provided on specific examples:

- Example 3 of the draft Guideline – in reconsidering the private usage, does this mean the private usage of the Hobart apartment should be limited to no more than 4 weeks (or other period) each year (similar to Example 1 in the green zone)?
- Example 4 of the draft Guideline – there should be specific reference to the number of Australian football league games attended during the year and specific reference to what the ATO would consider to be sufficient limited private use of their Melbourne apartment for green zone purposes.

The final Guideline should confirm what is considered 'peak periods' for the Melbourne central business district (and other comparable major cities). Melbourne hosts many non-sporting events, concerts and festivals each year outside school holiday periods which attract a large number of bookings.

ATO response

There is no 'bright-line test' for peak periods. Each case will be determined on its own basis using an objective qualitative analysis (refer to Issue 4 of this Compendium).

In the final Guideline:

- We have included Examples 3 and 4 to the green zone examples to cover the scenarios of limited personal use with high occupancy during peak periods, including where there are short-term rental restrictions.

- Example 6 (Example 4 in the draft Guideline) clarifies the private use of the property.

Outcome

Clarified

Issue 9 – clarity around whether property is a holiday home

Paragraph or section of draft product

Not applicable – relevant to document structure

Issue raised

The submission provides that there is an inconsistent approach or emphasis between examples (zones) in concluding whether a property is a holiday home. The amber zone and red zone examples specifically conclude that the relevant properties are holiday homes. In contrast to this, the green zone examples only mention this in passing.

ATO response

In the final Guideline the green zone examples clarify that because the property is used by the taxpayer for their holidays and recreation, the property is a holiday home.

Outcome

Clarified

Issue 10 – examples that should be in the green zone based on a quantitative assessment

Paragraph or section of draft product

Not applicable – relevant to document structure

Issue raised

Submission comments on the following examples – stating that the quantitative factor means the examples should not be in the amber zone:

- Example 3 of the draft Guideline – the income-producing use is ‘more often than not’ which equates to more than 183 days per year, whereas the private use is ‘a few months’ which suggests no more than 90 days.
- Example 5 of the draft Guideline – the ski season lasts 120 days. The private use of the chalet is for a few days per fortnight (which equates to 20 odd days). The rest of the time in the ski season it is consistently booked. The private use is less than 20% in the peak period. There’s no basis on which it can be said that this property is not mainly used to produce assessable income.
- Example 7 of the draft Guideline – the personal use is 7 weeks (6 weeks summer school holidays and Easter – noting that the reference to Christmas overlooks the fact it falls in the summer school holidays) and it produces income for 10 weeks and is available at other times. It cannot be concluded that the property is not mainly used for income-producing purposes.
- Example 8 of the draft Guideline – the personal use is 12 to 24 days a year, and the property is let about 20 to 24 days a year. It cannot be concluded that the property is not mainly used for income-producing purposes.

ATO response

These comments focus on quantitative factors. Whether a property is used or held for use mainly to produce assessable income in the nature of rents, lease premiums, licence fees or similar charges requires an objective assessment of all relevant factors, which includes both quantitative and qualitative factors. There is no ‘bright-line’ test.

Outcome

No change

Issue 11 – clarity on some aspects of the ‘red zone’ examples**Paragraph or section of draft product**

Example 6

Issue raised

Submission requests more clarity on what is considered ‘major features’ and whether one inaccessible feature is sufficient for the red zone.

Example 6 of the draft Guideline, in which the taxpayer makes high end luxury assets inaccessible to guests, does not indicate the types of rooms or proportion of property this represents.

Submission recommends inclusion of examples that are more representative of most affected taxpayers with short-term rental properties which are not high-end.

For example, a granny flat that is exclusively maintained for short-term rentals. Even though the granny flat itself is never used for personal purposes, does the fact that the main house and most of the garden and the garage are blocked off mean that the property is a red zone property?

ATO response

Example 8 in the final Guideline (Example 6 in the draft Guideline) is intended to illustrate that blocking off features of the property that decreases the appeal of the property to potential tenants, points to the owner's prioritising the use of the property for their holidays and recreation rather than to produce rental income.

In the final Guideline, Example 8 clarifies this.

Outcome

Clarified

Issue 12 – use of holiday homes when no bookings

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

Submission requested addition of examples for situations where taxpayers take the opportunity to use a holiday home themselves during a 'no booking' period where there are no bookings for the property (including on weekends). An additional example was suggested of a situation where the decision to use the property is made just days before the period.

This is in contrast to periods in an income year during which a property is 'blocked out' for personal use by the owner or their friends and family.

ATO response

In TR 2026/1, Example 11, dealing with minor private use of a holiday home, considers a scenario where the owner occasionally uses the property when there are no bookings.

In the final Guideline, Example 3 covers the scenario where there is limited personal use with high occupancy during peak periods, and on occasions when there are no bookings the owner decides (only close to the day) to use the property for a private short stay.

Outcome

Position amended

Issue 13 – issues for family properties co-owned as tenants in common

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

In the context of the leisure facility non-deduction rule, problems may arise with meeting green or even amber zone status in a co-owned family property as shown in the following example.

A family beach house has been left jointly to 4 adult children by their now deceased parents. The property's use and availability is shared across peak periods (for example, each adult child tries to use the property with their own family for one week in peak summer season). Once all 4 adult children have had their one week of use, the entire summer has been dedicated to family or non-income-producing use. At other times of year, the property is genuinely available for rent.

Given the nature of this particular property's ownership and use, can the one week per family use in summer be justified as falling within the green zone of the draft Guideline or is the combined 4 (plus) weeks overall use by different branches of the family likely to be problematic for achieving green zone status?

ATO response

Use of the property by the co-owners, and their family and friends, is use for their holidays and recreation which does not give rise to assessable income in the nature of rents, lease premiums, licence fees or similar charges. The use of the property by the 4 adult children must be considered collectively when determining the property's main use.

Outcome

No change

ATO references

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