

TR 2026/1EC - Compendium

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Taxation Ruling compendium – TR 2026/1

❶ Relying on this Compendium

This Compendium of comments summarises and provides responses to submissions received during public and targeted consultation on draft Taxation Ruling TR 2025/D1 *Income Tax: rental property income and deductions for individuals who are not in business*. 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 – rental income from property is generally investment income rather than business income, and relevance of TR 97/11

Paragraph or section of draft product

Paragraph 6

Issue raised

The draft Ruling should explain that renting out property is generally regarded as investment income and not business income.

The ATO should bring attention to Taxation Ruling TR 97/11 *Income tax: am I carrying on a business of primary production?*

TR 97/11 (at paragraph 13) lists 8 indicators to determine whether a business is being carried on. Although that Ruling refers to the business of primary production, these indicators apply equally to activities of a non-primary production nature. A sentence should be added at the end of paragraph 6 of the final Ruling to explain the relevance of TR 97/11 to rental properties.

ATO response

We have clarified, at footnote 4 in paragraph 6 of the final Ruling, that the principles in TR 97/11 relating to whether a primary producer is carrying on a business also applies to non-primary producers.

Outcome

Clarified

Issue 2 – the Ruling should also cover non-individuals

Paragraph or section of draft product

Paragraph 5

Issue raised

The scope of the Ruling is expressly limited to individuals at this stage, but the concepts should apply to entities of any kind (if they are not conducting business). Many holiday homes are held in trusts or a company.

ATO response

The scope of the Ruling has intentionally been limited to individuals who are not in business to provide clarity for that group. Many of the concepts covered in the Ruling can also be applied to entities that are not individuals.

Outcome

No change

Issue 3 – section 26-50 departs from general tax policy

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

Section 26-50 departs from general tax policy by denying deductions rather than allowing apportionment of ownership costs.

Incidental or seasonal personal use should not, of itself, result in short-term rental accommodation properties being characterised as recreational assets where appropriate apportionment is applied.

ATO response

This is a question of general tax policy and is outside the scope of the Ruling.

Section 26-50 is an integrity provision to deny deductions for expenditure relating to leisure facilities, including holiday homes, in circumstances where they are not used (or held for use) mainly to produce assessable income. It operates independently of any apportionment of deductions under section 8-1.

Minor private 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.

Refer also to the response given at Issue 10 of this Compendium.

Outcome

No change

Issue 4 – interpretation and application of the exception to section 26-50

Paragraph or section of draft product

Allowable holiday home deductions

Issue raised

The interpretation and application in the draft Ruling of the exception to section 26-50 in subparagraph 26-50(3)(b)(ii) may result in the exception not being satisfied, resulting in subsection 26-50(1) operating to deny all deductions relating to property ownership.

In relation to the operation of the exception in subparagraph 26-50(3)(b)(ii) – the final Ruling should clarify whether limited private use should result in a complete denial of deductions.

ATO response

The exception in subparagraph 26-50(3)(b)(ii) applies where a property is used (or held for use) mainly to produce assessable income. Minor or incidental or limited private use will not, of itself, result in the denial of deductions. Whether the exception applies depends on an objective assessment of all relevant facts and circumstances.

Outcome

No change

Issue 5 – scope of expenses captured by section 26-50

Paragraph or section of draft product

Paragraphs 33 and 34

Issue raised

Concern has been raised about the scope of expenses that may be denied by section 26-50, including the distinction between ownership and non-ownership costs.

The final Ruling should have a comprehensive list of non-ownership expenses that are not subject to section 26-50.

Clarification requested on whether insurance costs in relation holiday homes are captured under section 26-50. This would serve to minimise ATO time spent regarding future private ruling applications on this issue. It is noted that insurance is not listed in paragraph 87 of the draft Ruling as an example of an ownership expense affected by section 26-50.

ATO response

Section 26-50 applies to losses or outgoings relating to the ownership or use of a leisure facility. Expenses that do not relate to ownership and use, such as certain operating costs related to renting the property out, are not subject to section 26-50.

Whether insurance costs are costs of ownership will depend on the nature of the insurance cover. The Ruling is not able to consider all possible factual circumstances.

Other ATO guidance provides further information on the treatment of specific expenses. Refer to the ATO Rental Properties Guide and content on ato.gov.au.

Outcome

No change

Issue 6 – meaning and scope of ‘holiday home’ and ‘leisure facility’

Paragraph or section of draft product

Paragraph 11

Issue raised

The draft Ruling incorrectly ties the definitions of ‘holiday home’ and ‘leisure facility’ to taxpayer use, whereas the law does not require this.

The legislation (section 26-50) does not require the relevant use of the land or building for holidays or recreation to be by the taxpayer. It is not clear why the draft Ruling imports a requirement into the analysis that does not exist in the law.

It may be that this is an attempt to limit the scope of the guidance to leisure facilities that have an element of use by the taxpayer, however, this results in parts of the guidance being technically incorrect.

ATO response

In the final Ruling:

- at paragraph 12, we have clarified the term ‘holiday home’ to include that it is a ‘type of leisure facility’
- at paragraph 12, the term ‘leisure facility’ has been included
- at paragraph 32, we have clarified that a holiday home is a type of leisure facility.

We do not agree that the focus of this guidance on a ‘holiday home’ limits the statutory definition. The legislation defines a leisure facility broadly as land, a building, or part of a building used or held for use for holidays or recreation. The guidance focuses on a type of leisure facility, being a ‘holiday home’ that is used (or held for use) by the owner and their associates.

The approach adopted in the final Ruling provides practical guidance consistent with a policy intent to establish a firm rule against a taxpayer enjoying a tax subsidy for what in truth is expenditure on their own holidays or recreation.

The broader application of section 26-50 to situations where a leisure facility is not used (or held for use) for the holidays and recreation of the owner or their associates is beyond the scope of the Ruling.

Outcome

Clarified

Issue 7 – draft Ruling’s interpretation of what is a ‘leisure facility’ in section 26-50 is overly broad

Paragraph or section of draft product

Holiday homes

Issue raised

The draft Ruling adopts an overly broad and apparent subjective approach in determining whether a property constitutes a ‘leisure facility’.

Submissions questioned whether the draft Ruling appropriately distinguishes between assets that are inherently leisure-oriented in nature and properties that are ordinarily income-producing but may be used privately at times. Reference made to the Explanatory Memorandum to the Income Tax Assessment Bill (No. 2) 1974 (EM) in paragraph 81 of the draft Ruling to former section 51AB of the *Income Tax Assessment Act 1936* (ITAA 1936), which illustrates the intended scope of the provision by reference to assets such as seaside cottages, holiday cottages and sporting or recreational facilities.

Characterising properties (including ordinary residential properties) as ‘leisure facilities’ based on patterns of private use risks extending the operation of section 26-50 beyond what was contemplated by the legislation. This approach may recharacterise properties as leisure facilities in circumstances where it is difficult to objectively assess the extent to which they are genuinely held for rent during the year.

ATO response

We maintain there is no basis in section 26-50, or in the explanatory materials to former section 51AB of the ITAA 1936, to limit the scope of what may constitute a leisure facility by reference to particular property characteristics or location.

‘Leisure facility’ is defined broadly in subsection 26-50(2), without being confined to assets of a particular type or in particular locations. The reference to types of assets in the EM are illustrative of purpose rather than exhaustive or determinative.

Outcome

No change

Issue 8 – change in use of a holiday home for part of the income year**Paragraph or section of draft product**

Clear change in main use of your holiday home

Clear change in use of a holiday home for part of the income year

Issue raised

Paragraphs 113 to 121 of the draft Ruling around changes in the main use of a holiday home during an income year do not expressly refer to subsection 26-50(4), nor explain how that provision operates where the property is mainly used to produce assessable income for only part of the year.

Example 14 of the draft Ruling does not walk through the mechanics of identifying the period that satisfies subsection 26-50(3), nor the apportionment of ownership expenses for that period on the basis of ‘so much as is reasonable’ under subsection 26-50(4). Examples 9 and 13 of the draft Ruling may also be read as denying ownership-related deductions even where there is part-year income-producing use, which appears inconsistent with subsection 26-50(4).

Paragraph 116 of the draft Ruling states that the exception in subsection 26-50(4) can only apply where there is a ‘definite and sustained change in the pattern of use’. While the EM cited at paragraph 117 of the draft Ruling illustrates a scenario involving discrete periods of private and income-producing use, it is unclear why this would preclude the operation of subsection 26-50(4) in respect of more than one qualifying part-year period within an income year.

Clarification of these issues, including explicit reference to subsection 26-50(4) and the application of the ‘reasonable in the circumstances’ apportionment test, would assist in understanding how ownership expenses are to be treated where a holiday home’s use changes one or more times during an income year.

ATO response

Paragraphs 47 and 129 of the final Ruling explain that the part-year use exception in subsection 26-50(4) must be read in the context of the general exception in subsection 26-50(3). Together, those provisions require that, during all or part of an income year, the holiday home is used (or held for use) mainly to derive assessable income, at all times during that period.

Consistent with this framework, we maintain:

- the approach taken in the Ruling whereby a part-year exception only arises where there is a definite and sustained change in the pattern of how the holiday home is used

- subsection 26-50(4) does not apply merely because a holiday home is capable of being identified as producing assessable income during discrete or recurring periods within a year. Regular or seasonal variations in use, including arrangements that form part of an established pattern of alternating private and income-producing use, do not of themselves constitute a change in use for the purposes of subsection 26-50(4).

Outcome

No change

Issue 9 – whether the test for ‘used (or held for use) mainly’ under subsection 26-50(3) is objective or subjective

Paragraph or section of draft product

Allowable holiday home deductions

Issue raised

Greater certainty should be provided on what is meant by ‘mainly’, including more guidance around the factors in paragraph 36 of the draft Ruling.

The introduction of a subjective assessment of whether a property is a ‘holiday home’ may represent a departure from the long-standing treatment of such properties.

The ‘mainly’ test should be an objective test rather than a subjective test, focusing on quantitative factors such as days rented compared with private use.

ATO response

The test in section 26-50 is an objective one. It does not depend on the subjective intentions of the owner, but requires an objective assessment of how the property is used, or held for use, having regard to all relevant facts and circumstances that would be apparent to a reasonable observer.

In the final Ruling:

- paragraphs 41 and 108 to 113 clarify that the question of whether a holiday home is used (or held for use) mainly to produce rent is determined by reference to objective factors and does not depend on the subjective intentions of the owner

- paragraphs 38 and 105 provide clearer explanation of the meaning of ‘mainly’, as well as paragraphs 39 to 42 and 106 to 114 which better explain the factors relevant to its application.

We maintain that both quantitative and qualitative factors are relevant (refer also to the response given at Issue 10 of this Compendium).

Outcome

Clarified

Issue 10 – clarification of the meaning of ‘mainly’ used (or held for use) in section 26-50

Paragraph or section of draft product

Allowable holiday home deductions

Issue raised

Consider if the word ‘*mainly*’ in section 26-50 should be understood as requiring a predominant (that is, more than 50%) income-producing use, consistent with the established meaning of that term in other provisions of the income tax law.

A property that is rented for more than half of the relevant period (including during peak periods), and otherwise genuinely held available for rent, may be regarded as being used or held *mainly* to produce assessable income, notwithstanding some private use.

The final Ruling should clarify:

- whether the ‘*mainly*’ test in section 26-50 is intended to operate as a *predominantly quantitative test*, or whether broader qualitative considerations apply
- whether there is (or should be) any *bright-line threshold* for determining when a property is used *mainly* to produce assessable income.

ATO response

In the final Ruling:

- Paragraphs 38 and 105 have been included to clarify that the term ‘mainly’ takes its ordinary meaning of chiefly or principally.

- Paragraphs 39 to 42 and 106 to 114 clarify that, in the context of section 26-50, this requires an objective assessment of all relevant facts and circumstances relating to both the use of, and holding of, the property.

We maintain that while the proportion of time a property is rented or available for rent is a relevant consideration, 'mainly':

- does not impose a strict quantitative threshold (such as use for more than 50% of the time), and
- does not operate as a bright-line test.

Rather, the enquiry is a holistic one, having regard to the relative significance of income-producing use compared with private use, including the nature, extent and timing of that use.

Outcome

Clarified

Issue 111 – Example 13 of the draft Ruling

Paragraph or section of draft product

Paragraphs 108 to 112

Issue raised

This example involves personal use for 28 to 35 days per year and states 'they tend to only rent the house out for limited times throughout the year'. Without more accurate quantification of what is meant by 'limited times' this example is unclear in resolving the question as to whether the property is 'mainly' used to produce assessable income.

ATO response

In paragraph 124 of Example 13 of the final Ruling, this reference has been clarified to be more specific about what 'limited times' means in the example.

Outcome

Position amended

Issue 12 – role of peak periods in determining whether a property is mainly used to produce assessable income**Paragraph or section of draft product**

Allowable holiday home deductions

Holiday home – exceptions

Issue raised

Commenters sought clearer guidance on the role of ‘peak periods’ and ‘peak seasons’ in determining whether a holiday home is used or held mainly to produce assessable income, particularly given the apparent emphasis placed on peak periods in the ruling and related guidance. This included clarification on:

- how private use during peak periods should be weighed relative to income-producing use across the year
- whether private use during peak periods can, of itself, outweigh substantial commercial use at other times.

Identifying peak periods may be complex and highly dependent on location and market conditions and raises questions around whether peak periods include all weekends, how peak periods should be identified in capital cities and large urban areas, and how peak seasons should be determined in regional, seasonal, event-driven or climate-specific destinations.

Clarification is sought as to how private use during peak periods should be weighed, including whether short or intermittent private use during peak periods (such as isolated weekends or short blocks of days) should be treated differently from extended private use throughout an entire peak period.

As many examples focus primarily on peak periods when determining whether the exception in subsection 26-50(3) applies, commenters queried whether there should be a bright-line or safe-harbour approach to assessing use during peak periods.

Private use during one or more peak period should not, of itself, displace a conclusion that a property is mainly used to produce assessable income, merely because the taxpayer does not derive the maximum potential rental income during those times.

ATO response

We maintain that:

- There is no bright-line test for what constitutes a ‘peak period’. The identification of peak periods will always be fact dependent and will vary according to the location of the property, its individual physical characteristics and the relevant market.
- Peak periods are a relevant consideration in assessing the use of a property but are not determinative on their own.

- Whether a property is used (or held for use) mainly to produce assessable income requires consideration of all relevant factors together, including what makes the property desirable as a holiday destination and the periods during which that desirability arises.

The final Ruling clarifies these points, including rewording paragraph 111 (paragraph 99 in the draft Ruling) and the addition of paragraph 113.

Outcome

Clarified

Issue 12 – greater clarity, consistency and commercial realism in the examples

Paragraph or section of draft product

Examples in the Ruling

Issue raised

Commenters requested greater clarity, consistency and commercial realism in the examples in the final Ruling and associated guidance. In particular, concerns were raised about how peak periods are to be identified and weighted when determining whether a property is mainly used to produce assessable income.

The draft Ruling, draft Practical Compliance Guideline PCG 2025/D6 *Apportionment of rental property deductions - ATO compliance approach* and 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* generally provide examples where a taxpayer is not making genuine attempts to let the property, such as through imposing strict conditions or higher rent, or a failure to promptly reply to enquiries. We acknowledge that it is necessary to outline negative behaviours in developing a risk framework. However, we consider that it would be beneficial for taxpayers if positive behaviours were also set out in the final Ruling and Guidelines. Including positive behaviours to demonstrate that a property is available for rent would better support taxpayers to actively apply those behaviours and comply with the law.

ATO response

The examples in the Ruling are intended to illustrate the operation of the law. Practical Compliance Guideline PCG 2026/3 *Application of section 26-50 of the Income Tax Assessment Act 1997 to holiday homes that you also rent out – ATO compliance approach* (which is referenced in the Ruling) and its examples, illustrates the ATO's compliance approach to section 26-50. In all cases, outcomes will continue to depend on the particular facts and circumstances.

The examples in PCG 2026/3 have been clarified to better reflect commercial reality and positive behaviours, specifically

- Example 3 of the final Guideline has been included to illustrate limited personal use during peak holiday periods where there is high rental occupancy
- Example 4 of the final Guideline has been included to illustrate limited personal use during peak holiday periods where there is high rental occupancy, where local government has imposed an annual 180-day short-term rental limit
- Example 6 of the final Guideline clarifies levels of personal use of a central business district apartment
- Example 8 of the final Guideline clarifies the significance of making major features inaccessible to guests.

Outcome

Clarified

Issue 13 – relevance of state-based taxes, levies and regulatory restrictions when applying section 26-50

Paragraph or section of draft product

Allowable holiday home deductions

Holiday home – exceptions

Issue raised

State and territory-based taxes, levies and regulatory restrictions (including short-stay levies, vacant residential property taxes and night caps on short-term accommodation) can significantly influence how holiday homes are priced, made available for rent and used by owners.

Owners may rent properties at below-market rates or structure their availability to maximise after-tax returns and comply with state-based requirements (for example, by maintaining occupancy above minimum thresholds or renting up to statutory night caps). Concern was expressed that such behaviour may be misconstrued as indicating that a property is not genuinely used for income-producing purposes.

Short-term rental night caps materially limit the number of days a property can be rented, irrespective of owner intent and, therefore, it is suggested that where a taxpayer seeks to rent a property to the maximum extent permitted under those caps, the property should be regarded as being used mainly to produce assessable income, with any personal use reflected through apportionment of deductions.

The interaction of federal tax law with state-based taxes and regulations may discourage investment in holiday rental properties, and that guidance should be mindful of these interactions and their impact on the sector.

ATO response

State-based taxes, levies and regulatory restrictions may form part of the overall factual matrix but do not alter the statutory test in section 26-50. The application of the provision depends on whether the property is used, or held for use, mainly to produce assessable income, assessed objectively having regard to all the circumstances. It will depend on the specific facts as to the relevance of these types of factors in determining whether the property is used or held for use mainly to derive rent.

Example 4 has been included in PCG 2026/3 (which is referenced in the final Ruling) to illustrate the operation of annual short-term rental limits.

Outcome

Clarified

Issue 15 – transitional compliance approach for section 26-50, including the prospective application of the Commissioner's view and the meaning of 'arrangement'**Paragraph or section of draft product**

Appendix 2

Issue raised

Commenters raised the issue of whether a taxpayer can rely on the transitional compliance approach in relation to the interpretation of section 26-50, including whether the Commissioner's view should apply prospectively only, for protection from penalties and interest where earlier expenses were claimed in accordance with previously published ATO guidance.

Commenters sought clarification of what constitutes an 'arrangement entered into prior to 12 November 2025' for the purposes of section 26-50, including whether this refers to bookings, advertising or availability for rent, ownership of the property, or prior use of the property as a holiday home or rental property, and requested illustrative examples.

Further comments related to the Commissioner's intended compliance posture during the transition period for section 26-50, including whether compliance activity would focus on education rather than audit, recognition of good-faith reliance on professional advisers or property managers, and the interaction with increased third-party reporting of short-term accommodation income.

ATO response

The transitional compliance approach reflects the Commissioner's established administrative practice and is intended to facilitate the implementation of the revised view on section 26-50.

The date of effect in the Ruling provides that the Commissioner's view on section 26-50 in the Ruling operates subject to this transitional compliance approach.

The transitional compliance approach has been simplified in paragraph 138 of the final Ruling. It provides that the Commissioner will not devote compliance resources to reviewing the application of section 26-50 to expenses incurred in relation to holiday homes that are rental properties, where those expenses are incurred *before 1 July 2026*.

The transitional compliance approach applies, provided there is no evidence of avoidance, fraud or evasion, and a taxpayer does not otherwise seek to take inappropriate advantage of the approach.

Outcome

Clarified

Issue 16 – view should only apply prospectively

Paragraph or section of draft product

Appendix 2

Issue raised

Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only*, outlines when ATO views should apply prospectively. PS LA 2011/27 states that the ATO views should only apply prospectively if 'any of our published material, including on ato.gov.au, accepts an industry practice regardless of how widely documented that industry practice is otherwise'.

Consistent with PS LA 2011/27, there is strong case for ATO's updated views to apply only on a prospective basis.

The presence of examples in the ATO Rental Properties Guide that are inconsistent with the draft Guidance suggests the existence of an established administrative practice permitting proportionate deductions for holiday homes held for income-producing purposes.

Where taxpayers have relied on long-standing ATO guidance, changes in interpretation should apply prospectively.

ATO response

Our views expressed in Taxation Ruling IT 2167 *Income Tax: rental properties – non-economic rental, holiday home, share of residence, etc. cases, family trust cases* (now withdrawn) relating to section 8-1 have not changed. Where these views are restated in the final Ruling, we see no basis for limiting these views to a prospective application.

The transitional compliance approach in the final Ruling acknowledges that individuals who are not carrying on a business may have entered into arrangements without realising that section 26-50 may apply.

The transitional compliance approach in the final Ruling has been clarified to acknowledge that the Commissioner will not devote compliance resources to reviewing whether section 26-50 applies to expenses incurred in relation to holiday homes that are rental properties if the expenses are incurred *before 1 July 2026*.

The examples in future versions of the ATO Rental Properties Guide will be updated to be consistent with the final Ruling – to cover the operation of section 26-50.

Section 8-1 operates separately to section 26-50. If an exception to section 26-50 applies to a holiday home, the administrative practice permitting fair and reasonable proportionate deductions for holiday homes held for income-producing purposes will continue to apply under the final Ruling as it did in IT 2167.

Outcome

No change

Issue 17 – payments received in household or family arrangements

Paragraph or section of draft product

Amounts received in household or family situations that are not assessable

Amounts received in household or family situations that are assessable

Issue raised

Paragraph 22 of the draft Ruling appropriately explains that amounts received from family or household members for family care or the shared responsibility for household expenses are not assessable income. The paragraph could be clarified to note that these arrangements may include family or private boarding arrangements, including situations involving the payment of board.

Paragraph 23 of the draft Ruling addresses when amounts received under shared household or family arrangements may be assessable. The binding section could clarify that where amounts received exceed the cost of board, such as where they include consideration for the right to occupy the property, those amounts are assessable, and that arm's length and non-arm's length arrangements may affect the availability of deductions.

The draft Ruling may be overly broad in its treatment of shared households and could impose tax consequences where occupants simply share rent in a reasonable manner, regardless of who is named on the lease. Shared household arrangements can be legally and practically fluid and that genuine shared rental accommodation should not give rise to assessable income or allowable deductions solely because not all occupants are parties to the rental agreement.

Example 3 of the Ruling places undue emphasis on the legal form of the arrangement, particularly lease participation. While agreeing with the outcome where amounts charged exceed a reasonable sharing of rent and expenses and result in a profit, lease arrangements alone should not drive different tax outcomes from those in Example 2 of the Ruling.

ATO response

The Ruling focuses on the substance of payments received, rather than the terminology used to describe them. Whether amounts are received for family care, shared household expenses, or other purposes depends on what the payment is for, having regard to the overall arrangement.

Shared household and family arrangements are inherently fact-driven. Whether amounts received are assessable income will depend on the totality of the circumstances, including the nature of the arrangement, the use of the property, and whether amounts received go beyond a reasonable sharing of costs. Use of a property by family members or friends at reduced rates is considered as part of this broader qualitative assessment and is not determinative of the tax outcome in isolation.

The difference illustrated between Example 2 and Example 3 of the Ruling reflects differences in the overall facts, including ownership of the property and the nature of the amounts received, rather than lease arrangements alone. The Ruling is not intended to impose bright-line tests for shared housing situations, including where only one occupant is named on a lease.

Outcome

No change

Issue 18 – renting to family or friends at non-market rates

Paragraph or section of draft product

Paragraph 62

Issue raised

Example 6 of the final Ruling should expressly state that where a property is rented below market rates, deductions are limited to the amount of rent received. This clarification is necessary to align the final Ruling with existing ATO guidance, including the ATO Rental Properties Guide and draft PCG 2025/D6.

It is important to clearly reinforce a cap on deductions in below-market rental situations, and the final Ruling should expressly refer to this limitation to ensure consistency with existing ATO publications.

ATO response

Where a property is rented at below market rates to family members and friends, deductions may be limited to the amount of rent received. However, whether and how deductions are limited in these circumstances is a matter of fair and reasonable apportionment, rather than a rule imposed by law.

Paragraph 44 of Practical Compliance Guideline PCG 2026/2 *Apportionment of rental property deductions – ATO compliance approach*, including Example 7, confirms that where expenses that would otherwise be deductible exceed the rent received, the Commissioner will accept that it is fair and reasonable to limit deductions to the amount of rental income from the property.

To assist readers and ensure consistency with existing guidance, footnote 29 has been included in Example 6 at paragraph 68 of the final Ruling, directing readers to PCG 2026/2.

Outcome

Clarified

Issue 19 – timing of incurrence of land tax

Paragraph or section of draft product

Paragraph 65

Issue raised

Paragraph 65 of the draft Ruling says that land tax is incurred in the year the assessment is issued. This statement might be at odds with case law and seems to be at odds with statements on the ATO's website. The ATO website at [Common property expenses](#) (QC 103905) states:

If you earn rental income from a property, you can claim a deduction for land tax. Include the deduction in the income year the liability relates to, not the year you pay it.

State authorities sometimes issue land tax assessments for different periods of time, including amounts from earlier years (arrears).

It also seems to be inconsistent with ATO Interpretative Decision ATO ID 2010/192 *Deductions: land tax arrears* (withdrawn 6 July 2015) which states that land tax is generally incurred at the start of the calendar year as the land holdings at this time determine the liability for land tax and the liability is effectively crystallised, even though a notice may not be issued for some months.

ATO response

Paragraph 71 of the final Ruling (paragraph 65 of the draft Ruling) has been clarified to include a statement that land tax is incurred when the land tax liability arises, which is not determined by when an assessment is issued or an amount is paid.

Outcome

Position amended

Issue 20 – capital gains tax issue: cost base – non-deductible ownership expenses**Paragraph or section of draft product**

Paragraphs 33 and 86

Issue raised

The final Ruling should clarify that ownership expenses denied deductibility under section 26-50 may nevertheless form part of the *third element of the cost base* under subsection 110-25(4).

Where the exception in subparagraph 26-50(3)(b)(ii) is not met and expenses are non-deductible under subsection 26-50(1), it is considered that those costs should be included in the cost base. This approach is said to be consistent with existing ATO guidance, including paragraph 25 of Taxation Ruling TR 2023/3 *Income tax: expenses associated with holding vacant land*.

ATO response

Paragraph 95 of the final Ruling has been included to clarify that where section 26-50 denies a deduction for losses or outgoings relating to the ownership or use of a holiday home, those expenses may form part of the third element of the cost base of the asset.

Footnote 51 of the final Ruling has been included to clarify that the cost base provisions in Division 110 apply to determine whether amounts denied deductibility under section 26-50 can be included in the cost base of a relevant asset, including the application of the reduced cost base rules in Subdivision 110-B.

Outcome

Clarified

Issue 21 – capital gains tax**Paragraph or section of draft product**

Not applicable – relevant to document scope

Issues raised***Main residence exemption – effect of income-producing use***

The final Ruling should better explain how the main residence exemption may be affected by income-producing use of a dwelling, regardless of whether deductions for ownership costs (such as interest) have actually been claimed.

Commenters refer to Taxation Determination TD 1999/66 *Income tax: capital gains: what factors should be taken into account in determining the 'amount that is reasonable' in applying subsection 118-190(2) of the Income Tax Assessment Act 1997?*, which explains that subsection 118-190(2) operates on a *hypothetical basis*, assuming interest would have been deductible if money had been borrowed to acquire the dwelling. It is the use of the dwelling to produce assessable income, rather than the claiming of deductions, that can give rise to a partial main residence exemption.

6-year absence rule and short-term or partial rentals

There is a common misconception that renting out part or all of a dwelling for short periods (including periods of less than 6 years) has no capital gains tax consequences because of the 6-year absence rule.

It is put that section 118-145 does not apply because the dwelling has not ceased to be the taxpayer's main residence, in scenarios where:

- a room in a dwelling is rented while the owner continues to live there, or
- the entire dwelling is rented for a short period while it continues to be the owner's main residence.

Instead, section 118-190 applies, resulting in a partial main residence exemption.

The final Ruling should:

- explain the interaction between sections 118-145 and 118-190 in these scenarios
- clarify that short-term or partial rentals do not qualify for the 6-year absence rule where the dwelling remains the main residence, and
- include practical examples illustrating these outcomes.

ATO response

These are capital gains tax issues and are outside the scope of the Ruling. Consideration will be given to whether those issues are adequately addressed in existing guidance, including the ATO Rental Properties Guide.

Outcome

No change

Issue 22 – meaning of expenses to be ‘attributed to each co-owner’

Paragraph or section of draft product

Paragraphs 21 and 45 to 47

Issue raised

Further clarification is requested on what it means in the draft Ruling for expenses to be ‘attributed to each co-owner’. In particular, where co-owners are jointly liable for an expense, whether each co-owner is entitled to a deduction for their proportionate share where only one co-owner has paid the expense, and whether reimbursement between co-owners is required in order for a co-owner to be entitled to their share of the deduction.

ATO response

Detailed guidance on the attribution of deductions for shared expenses is beyond the scope of the Ruling. No change has been made to the Ruling. The Ruling already directs users to Taxation Ruling TR 93/32: *Income tax: rental property – division of net income or loss between co-owners* for completeness.

In addition to TR 93/32, there is also comprehensive guidance available on co-ownership arrangements in the ATO Rental Properties Guide.

Outcome

No change

Issue 23 – homestay arrangements – view in ATO ID 2001/381

Paragraph or section of draft product

Amounts received in household or family situations that are assessable

Issue raised

The draft Ruling refers to homestay arrangements but does not include an example dealing with the homestay program for international secondary school students in South Australia. The draft Ruling refers to *The Commissioner of Taxation of the Commonwealth of Australia v Groser, Adrian Charles Noel* [1982] VicSC 352 (*Groser*).

ATO Interpretative Decision ATO ID 2001/381 *Payments received under a homestay arrangement* specifically considers South Australian homestay arrangements where amounts paid to the host are applied to meeting the student's household expenses (such as food, utilities and phone costs). That interpretative decision also relies on *Groser*.

The question raised is whether ATO ID 2001/381 remains current, or whether it is displaced or superseded by the views expressed in the draft Ruling.

ATO response

ATO ID 2001/381 is consistent with the Commissioner's view as reflected in the Ruling.

Outcome

No change

Issue 24 – visual representation

Paragraph or section of draft product

Not applicable – relevant to document structure

Issue raised

While paragraph 12 of the draft Ruling explains how to use the draft Ruling, taxpayers would benefit from an overarching framework to guide them through the relevant provisions to determine the tax treatment of their property. This could take the form of a flow chart, table, matrix or method statement.

ATO response

A diagram has been included in the final Ruling, at paragraph 136, to assist taxpayers by providing a visual guide to the application of the principles in the Ruling.

Outcome

Position amended

Issue 25 – education for taxpayers and tax agents

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

Concerns have been raised that the draft Ruling reflects a revised ATO interpretation, particularly in the application of section 26-50, rather than a legislative change. Changes based solely on administrative reinterpretation may have limited impact on taxpayer behaviour, especially given the long history of guidance that did not refer to section 26-50.

The final Ruling should support clear, practical and user-friendly educational materials to assist taxpayers and advisers to understand and transition to the revised approach for holiday homes. Suggested measures included detailed content on ato.gov.au, practitioner information sheets, educational webinars, and explanation of the Ruling through open forums and broader communication campaigns.

Given the lengthy historical position, there was emphasis on the need for a highly visible and widely publicised education campaign to ensure taxpayers and tax practitioners are aware of, and understand, the change in approach and the role of the proposed risk assessment framework.

ATO response

Our content on ato.gov.au (including in future versions of the ATO Rental Properties Guide) will be updated to include references to holiday homes and to reflect the ATO's position as set out in the final Ruling. We are considering how best to communicate and engage with tax agents on this issue.

Outcome

No change

Issue 26 – record-keeping requirements

Paragraph or section of draft product

Not applicable – relevant to document scope

Issue raised

The final Ruling should provide clearer guidance on record-keeping requirements for holiday homes, including a checklist of records needed to demonstrate genuine availability during peak periods. Records maintained by licensed property managers and online booking platforms (such as, booking calendars, advertising records and rate histories) should be accepted as sufficient evidence for owners.

It is important to remind taxpayers to keep accurate records of the income-producing use of the dwelling, as this is necessary to correctly calculate any capital gains tax consequences when all or part of the property is sold.

ATO response

Detailed guidance on record-keeping requirements is outside the scope of the Ruling.

General guidance on record-keeping obligations for rental properties already available in existing content on ato.gov.au (including the ATO Rental Properties Guide) will be updated as necessary to address record-keeping requirements relevant to holiday homes.

Outcome

No change

Issue 27 – provision of further examples

Paragraph or section of draft product

Not applicable – relevant to document structure

Issue raised

Commenters requested more examples in the final Ruling to cover specific fact patterns.

ATO response

The Ruling is not able to consider all possible factual circumstances.

Outcome

No change

Issue 28 – rephrase content on 26-50 to reflect its role and provide commentary on its purpose

Paragraph or section of draft product

Holiday homes

Issue raised

Recommend rephrasing section 26-50 content to reflect its role in denying deductions that are essentially private or domestic in nature.

There is no commentary stating that the purpose of the provision is to establish a firm rule that prevents taxpayers from obtaining a tax subsidy for expenditure on their own recreation.

ATO response

Section 26-50 relates to leisure facilities, the phrase 'private and domestic' does not appear in section 26-50. Including a reference to 'private and domestic' in relation to section 26-50 would be incorrectly introducing concepts from section 8-1.

The policy intent of section 26-50 is referenced in paragraph 87 of the final Ruling which includes references to the EM which explains the predecessor to section 26-60 and a footnote reference to Parsons RW (1985) *Income Taxation in Australia*, The Law Book Company Limited, Sydney.

Outcome

No change

ATO references

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