

TR 2003/4A - Addendum - Income tax: boat hire arrangements

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Addendum

Taxation Ruling

Income tax: boat hire arrangements

This Addendum amends Taxation Ruling TR 2003/4 to reflect changes to the taxation treatment of boating activities as a result of *Tax Laws Amendment (2007 Measures No. 2) Act 2007*. Elements of sections 26-50 and 40-25 of the *Income Tax Assessment Act 1997* (ITAA 1997) relating to boating activities have been repealed and are now considered in section 26-47 of the ITAA 1997, with effect from 1 July 2007.

The changes allow taxpayers who cannot demonstrate that they are carrying on a business using a boat to claim deductions for boating expenses up to the level of their boating income. Deductions in excess of the boating income are quarantined and carried forward to be deducted against assessable income from boating activities in later years.

The amendments do not affect the underlying principles for the deductibility of expenses and carrying forward of losses for those taxpayers carrying on a business using a boat. TR 2003/4 has ongoing operation where the taxpayer is carrying on a business.

TR 2003/4 is amended as follows:

1. Paragraph 1

Omit the paragraph; substitute:

1. This Ruling considers the operation of section 26-47^{1 2} of the *Income Tax Assessment Act 1997* (ITAA 1997) which limits expenses incurred in respect of a boat used for hire from being deductible unless this activity amounts to the carrying on of a business.³ Specifically, this Ruling deals with:

¹ Prior to 1 July 1997 deductions for a boat were denied under section 51AB of the *Income Tax Assessment Act 1936* (ITAA 1936) and deductions for depreciation of a boat that was a 'leisure facility,' were denied under subsection 54(3) of the ITAA 1936, subject to subsections 54(3A) and (4) of the ITAA 1936. From 1 July 1997 subsections 42-45(3) and 42-170(2) and (3) of the ITAA 1997 have substantially the same operation, in relation to boats acquired before 1 July 2001.

² [Omitted.]

³ [Omitted.]

- when the taxpayer's activity amounts to the carrying on of a *business⁴ in relation to a boat for the purposes of subsection 26-47(3);
- when deductions are not reduced for a boat under subsection 26-47(3); and
- apportionment of expenses between *business and non-business use where a *business is being carried on in relation to the boat.

2. Paragraph 2

Omit '26-50(5)'; substitute '26-47(3)'.

3. Paragraph 3

Omit 'section 26-50 of the ITAA 1997 prevents'; substitute 'section 26-47 of the ITAA 1997 limits'.

4. Paragraph 4

(a) Omit 'Section 26-50 of the ITAA 1997 operates to deny'; substitute 'Section 26-47 of the ITAA 1997 operates to quarantine'.

(b) Omit 'denied'; substitute 'quarantined'.

5. Paragraph 8

Omit 'denied under section 26-50'; substitute 'subject to section 26-47'.

6. Paragraph 24

Omit the paragraph (including the heading); substitute:

Otherwise allowable deductions quarantined by section 26-47

24. Section 26-47 may operate to quarantine deductions in relation to a boat that are otherwise available under the taxation law, unless a *business is being carried on in relation to the boat by the taxpayer claiming the deductions.

7. Paragraph 25

(a) Omit:

⁴ An asterisk before a term in this Ruling denotes that the term is defined in the ITAA 1997. Terms that are defined in the ITAA 1997, and identified with an asterisk in the Act, are similarly identified in this Ruling.

Section 26-50 will not, subject to the part year provisions contained in subsection 26-50(6), deny a deduction to a taxpayer if, at all times in the income year,

Substitute:

Section 26-47 will not quarantine a deduction to a taxpayer if,

(b) Omit:

(Refer paragraphs 26-50(5) (a), (b) and (c).)

Substitute:

(Refer paragraphs 26-47(3) (a), (b) and (c).)

8. Paragraph 26

Omit the paragraph; substitute:

26. Deductions are also not quarantined under section 26-47 where the use of the boat is essential to the efficient conduct of a *business carried on by the taxpayer. (Refer paragraph 26-47(3)(d).)

9. Paragraph 27

Omit the paragraph.

10. Paragraph 28

Omit the paragraph; substitute:

28. Paragraph 26-47(3)(b) provides that one of the exceptions to the quarantining rule in subsection 26-47(2) is where the taxpayer is:

using a boat (or holding it) mainly for letting it on hire in the ordinary course of a *business that [they] carry on.

11. Paragraph 29

Omit 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

12. Paragraph 30

Omit the paragraph; substitute:

30. It is not sufficient that the boat is used or held for letting it on hire in the ordinary course of a business for only a minor part of the year. It must be used or held 'mainly' for this purpose. If the boat is not used or held 'mainly' for this purpose, deductions in respect of the boat are subject to the quarantining rule in subsection 26-47(2).

13. Paragraph 32

Omit 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

14. Paragraph 33

(a) Omit the first sentence; substitute:

33. Paragraph 26-47(3)(d) provides that one of the exceptions to the quarantining rule in subsection 26-47(2) is where the taxpayer is:

using [the] boat for a purpose that is essential to the efficient conduct of a *business that [they] carry on.

(b) Omit from the Note 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

15. Paragraph 34

Omit the paragraph.

16. Paragraph 35

Omit the paragraph (including the heading).

17. Paragraph 36

Omit 'subsection 26-50(5)'; substitute 'subsection 26-47(3)'.

18. Paragraph 41

Omit 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

19. Paragraph 93

Omit the heading; substitute:

Otherwise allowable deductions quarantined by section 26-47

20. Paragraph 94

Omit the paragraph; substitute:

94. Deductions in relation to boats are quarantined under subsection 26-47(2) for amounts relating to using or *holding boats for which a taxpayer could otherwise deduct. This includes losses or outgoings incurred in:

- acquiring and retaining ownership of or rights to use a boat;
- using, maintaining or repairing a boat; or
- relation to an obligation associated with ownership or rights to use the boat.

21. Paragraph 95

Omit from the first sentence:

95. Subsection 26-50(5) provides exceptions to the denial of deductions under subsection (1) where you:

- hold the boat as trading stock for sale in the ordinary course of a business that you carry on; or

Substitute:

95. Subsection 26-47(3) provides exceptions to the quarantining rule under subsection 26-47(2) where you:

- hold the boat as your trading stock; or

22. Paragraph 96

Omit the paragraph.

23. Paragraph 97

Omit the paragraph; substitute:

97. Paragraph 26-47(3)(b) provides that one of the exceptions to the quarantining rule in subsection 26-47(2) is where the taxpayer is:

using a boat (or holding it) mainly for letting it on hire in the ordinary course of a *business that [they] carry on.

24. Paragraph 98

Omit the last sentence; substitute:

If the boat owner is merely in receipt of income for letting the boat to a charter operator, who uses that boat in their business of letting it on hire, this will not satisfy the requirements of paragraph 26-47(3)(b) for the boat owner.

25. Paragraph 99

Omit 'Paragraph 26-50(5)(b)'; substitute 'Paragraph 26-47(3)(b)'.

26. Paragraph 103

Omit 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

27. Paragraph 105

Omit 'paragraph 26-50(5)(b)'; substitute 'paragraph 26-47(3)(b)'.

28. Paragraph 106

Omit the first sentence; substitute:

106. Paragraph 26-47(3)(d) provides that one of the exceptions to the quarantining rule in subsection 26-47(2) is where the taxpayer is:

using [the] boat for a purpose that is essential to the efficient conduct of a *business that [they] carry on.

29. Paragraph 111

Omit the paragraph.

30. Paragraph 112

Omit the paragraph (including the heading).

31. Paragraph 113

Omit the paragraph.

32. Paragraph 115

Omit 'subsection 26-50(5)'; substitute 'subsection 26-47(3)'.

33. Paragraph 138

Omit the paragraph; substitute:

138. The income derived in respect of the yacht each month is assessable income in Lenny's hands but deductions in excess of the boating income are quarantined and carried forward to be deducted against assessable income from boating activities in later years, in accordance with section 26-47 of the ITAA 1997.

34. Paragraph 157

Omit the paragraph; substitute:

157. The income derived in respect of the yachts each month is assessable income in Charlie's hands but deductions in excess of the boating income are quarantined and carried forward to be deducted against assessable income from boating activities in later years, in accordance with section 26-47 of the ITAA 1997.

35. Paragraph 165

Omit the second sentence; substitute:

Deductions related to the yacht are not quarantined under section 26-47, as Chloe and Roma are carrying on a *business in relation to the boat.

36. Paragraph 167

Omit the second sentence; substitute:

As a consequence, the income that Susan receives under the lease agreement will be assessable, and the expenses in relation to the houseboat will be allowable deductions subject to the quarantining rules in section 26-47 of the ITAA 1997.

37. Paragraph 168

Omit the paragraph (including the heading).

38. Paragraph 169

(a) Omit 'draft'.

(b) Omit:

Otherwise allowable deductions denied by sections 26-50 & 40-25	24
Schemes to avoid section 25-60	35
Otherwise allowable deductions denied by sections 26-50 & 40-25	93
Schemes to avoid section 26-50	112
Corresponding provisions of the ITAA 1936 and the ITAA 1997	168
Appendix	page 49

(c) Insert:

Otherwise allowable deductions quarantined
by section 26-47 24

Otherwise allowable deductions quarantined
by section 26-47 93

39. Legislative references

Omit:

- ITAA 1936 25(1)
- ITAA 1936 51(1)
- ITAA 1936 51AB(1)
- ITAA 1936 51AB(2)
- ITAA 1936 51AB(3)(b)
- ITAA 1936 51AB(4)
- ITAA 1936 51AB(5)
- ITAA 1936 51AB(6)
- ITAA 1997 26-50(1)
- ITAA 1997 26-50(2)
- ITAA 1997 26-50(3)
- ITAA 1997 26-50(4)
- ITAA 1997 26-50(5)
- ITAA 1997 26-50(5)(a)
- ITAA 1997 26-50(5)(b)
- ITAA 1997 26-50(5)(c)
- ITAA 1997 26-50(5)(d)
- ITAA 1997 26-50(6)
- ITAA 1997 26-50(7)
- ITAA 1997 26-50(8)
- ITAA 1997 40-25
- ITAA 1997 40-25(3)
- ITAA 1997 40-25(4)

Insert:

- ITAA 1997 26-47
- ITAA 1997 26-47(2)
- ITAA 1997 26-47(3)
- ITAA 1997 26-47(3)(a)
- ITAA 1997 26-47(3)(b)
- ITAA 1997 26-47(3)(c)
- ITAA 1997 26-47(3)(d)

40. Appendix

Omit the Appendix.

This Addendum applies on and from 1 July 2007.

Commissioner of Taxation

29 October 2008

ATO references

NO: 2006/20258

ISSN: 1039-0731

ATOlaw topic: Income Tax ~~ Assessable income ~~ business and
professional income - Australian sourced
Income Tax ~~ Assessable income ~~ rental property
income