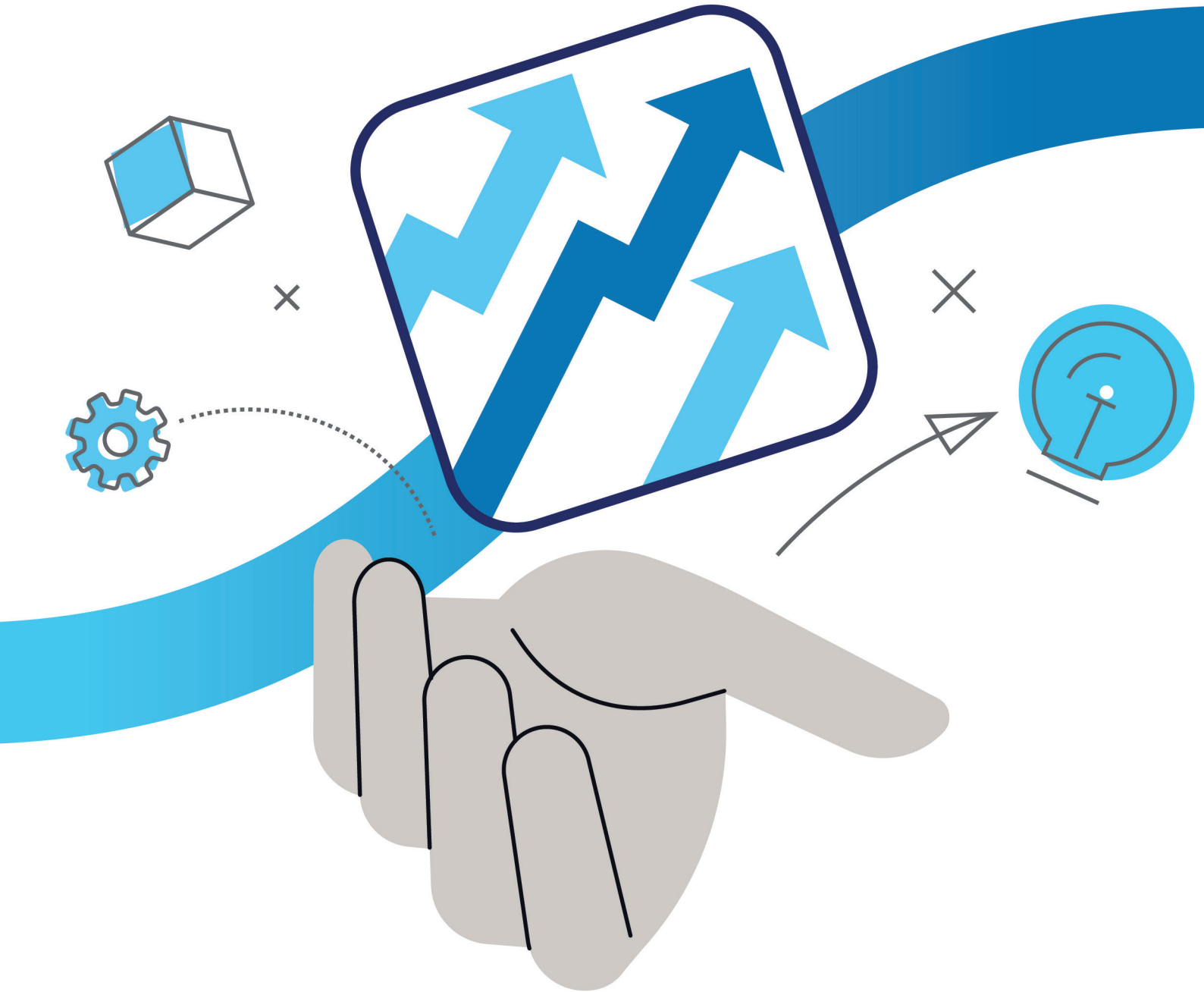
INSTITUTE OF PUBLIC ACCOUNTANTS®



A sneak peek into the 2026

Tax Agent Guide

Written by Mark Morris - TaxKnowHow

Draft Taxation Ruling TR 2025/D1

The Draft Ruling explains:

- when amounts received for the use of a rental property will be included in assessable income;
- when losses or outgoings incurred in respect of a rental property can be claimed as deductions;
- how deductions in respect of the rental property can be apportioned where the property is used for both income producing and non-income producing uses; and
- when certain deductions for a holiday home that is also used as a rental property will be denied because the holiday home is regarded as being a 'leisure facility' for the purposes of applying section 26-50 of the ITAA 1997.

Each of these elements of the Draft Ruling are discussed below.

Tip

Whilst the Draft Ruling does briefly list deductions which may be potentially available in respect of a rental property more detailed guidance on the range of potential rental deductions available is set out in the ATO publication 'Rental properties guide 2025' which can be downloaded from the ATO at https://www.ato.gov.au/forms-and-instructions/rental-properties-2025

Details of such rental deductions are provided after the commentary on the above guidance products.

Important

The Draft Ruling does not:

- provide advice regarding the carrying on of a business which would result in the non-application of section 26-50, (which should be determined by the range of factors applied by the ATO in determining whether a business is being carried under Taxation Ruling TR 97/11);
- apply to entities other than individuals; or
- provide detailed advice regarding various specific topics including the holding of vacant land, repairs, depreciation, capital works or rental property travel deductions.

Former Income Tax Ruling IT 2167 which set out many principles concerning the assessability of rental income was also withdrawn on 12 November 2025, (although much of its long-standing guidance has been incorporated into the Draft Ruling).

When assessable income is received from the rental of the property

Assessable income from the rental of the property includes amounts derived from rent, lease premiums, licence fees or other similar charges which will be regarded as being ordinary income under section 6-5 of the ITAA 1997.

Such income includes amounts received for the rental property through an agent, a sharing or on-line platform or from the rental of the property directly to a tenant. It also includes income from the sub-leasing of a rental property to another party.

Importantly, the amount of such rental income will form part of the income derived by the non-business individual even if the income which is received does not reflect a commercial arm's-length rate for the rental of such a property.

Where an individual co-owns the rental property with someone else rental income must be attributed to each co-owner according to their respective legal interests in the property which will depend on whether that property is owned by the parties as joint tenants or tenants in common.

Where the property is co-owned by joint tenants they will split the income equally based on their co-ownership. By contrast if the parties are tenants in common the income will be split between the co-owners based on their respective percentage ownership in the property as shown in the title deed for the property.

Non-assessable amounts received in respect of family household expenses

Amounts which are received in the context of household family situations are not assessable income where such amounts are paid because family members share responsibility for covering the cost of household expenses (e.g. the payment of board by a family member to cover the proportionate cost of household expenses which relate to that family member).

In these circumstances the amount received will be designed to partly cover household expenses rather than be a payment received for the use of the property under a lease or licence.

▶ Example - Adapted from Example 1 of TR 2025/D1 concerning the payment of board by a daughter to a parent to help cover household costs

Brienne owns her home and her daughter Anna, who is currently doing an apprenticeship, is living with her.

Brienne also has two young sons who also live with her.

Brienne and Anna agree that Anna will pay Brienne $200 per week for board, which is used to cover Anna's share (roughly 25%) of food, electricity, and other household expenses.

There is no assessable income as the arrangement between Brienne and Anna is a household or family arrangement as the money paid to Brienne is related to her daughter's share of household expenses rather than for her use of Brienne's property.

Assessable amounts received in respect of household or family situations

Some family or domestic arrangements in a shared household scenario may nonetheless still have the character of being assessable income.

For example, if an individual leases or owns a property, and subleases it to the other occupants of the property, the amount received from those other occupants will be assessable income to the extent the amounts received relate to their right to use the property.

▶ Example - Adapted from Examples 4 and 5 of TR 2025/D1 concerning income derived from the rental of part of a property by a couple to an international student

Fatima and Raoul purchased their own home.

They bring in a foreign student, Michelle, who lives in a room at their house and eats meals with the family.

Michelle's sponsor pays $80 per week to Fatima and Raoul to cover the cost of Michelle's household expenses, such as food and other amenities.

The $80 received is not assessable income as the amounts paid are merely calculated to cover Michelle's proportion of shared household costs.

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Fatima and Raoul also receive rent of $320 from Michelle sponsor in exchange for her right to use and enjoy part of the property which is in addition to the $80 paid to cover the cost of Michelle's household expenses.

The $320 forms part of the rental income derived from the property as it relates to Michelle's right to use and enjoy part of the property, which is in addition to sharing the cost of food and other amenities relating to her stay.

Fatima and Raoul may be able to claim apportioned deductions for expenses related to ownership of the property, but not for Michelle's contribution of $80 towards the cost of household expenses.

Non-arm's length rental income derived on rental to family members

The Draft Ruling also recognises that that the rental of a property to a family member may be undertaken partly for the purpose of producing assessable income and partly to assist the family member with their accommodation needs.

Where it is contended that the amount received is merely a contribution towards the costs of upkeep for a family member it will be incumbent on the individual to show that the amount received has no relationship to the use of the property and the amount was incurred because an individual was responsible for that person's care. In these circumstances the amount received would be fully non-assessable.

However, the amount that is actually received under a lease or licence for the use of the property must be included in the individual's assessable income for the use of the property even if the relevant family member paid less than an arm's-length rate for the rental of the property because the accommodation was provided at a discounted rate to assist a family member.

▶ Example - Adapted from Example 6 of TR 2025/D1 concerning the rental of a property to a family member which is made on a non-arm's-length basis

Arnaud owns a rental property that he is currently leasing to his brother at a below market rate because Arnaud he wants to help his brother with his living expenses.

Arnaud is therefore using the property to both produce his assessable income and to help with his brother's accommodation.

The amount that Arnaud receives from his brother is still ordinary income and will form part of Arnaud's assessable income, even though the amount received is below the market rate.

He will therefore need to apportion deductions relating to the property because the reduction in rent represents a non-arm's length amount to help his brother with his accommodation.

When deductions are incurred in respect of a rental property

Deductions for losses or outgoings relating to a rental property are allowable to the extent that they are incurred by the relevant individual in gaining or producing the assessable income from the property.

However, such amounts are not deductible to the extent that they are capital (or of a capital nature), of a private or domestic nature or are prevented from being deductible under another legislative provision (e.g. section 26-50 which prevents deductions being allowable when incurred in respect of a holiday home unless an exception applies).

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Applying general principles a loss or outgoing is only incurred when the relevant individual actually pays an amount or has a definite obligation to pay an amount. For example, land tax is only incurred when an assessment of tax is issued rather than when it is paid.

If individuals co-own a rental property expenses must be apportioned to each co-owner based on their legal interest in the property in the same way that rental income is apportioned between joint tenants or tenants in common.

As discussed, a full list of potential rental deductions is discussed later in the commentary on Item 21.

Apportionment of deductions where the property is used for both producing rental income and for other non-income producing uses

The apportionment of rental deductions is required where the property is only partly used to produce assessable income and is also partly used for some other purpose. For example, one part of the property may constitute an individual's residence whilst the other part of the property is rented out.

In these circumstances the losses or outgoings must be apportioned in a 'fair and reasonable' way between the activities which produce the individual's assessable income and the other use or purpose for which the property is put, (unless it can be clearly established that the expense incurred wholly relates to the derivation of rental income).

Draft Practical Compliance Guideline PCG 2025/D6 provides that an apportionment of deductions can usually be made on a fair and reasonable basis between the income producing and non-income producing uses of the property applying a time-based model or an area-based model (or some combination of both methodologies).

Determining what is a fair and reasonable basis will depend on particular facts and circumstances. However, the apportionment methodologies contained in the PCG 2025/D6 will be considered to be fair and reasonable where the taxpayer is eligible to use the draft PCG and the most appropriate methodology is adopted. In these circumstances, 'the Commissioner would not have cause to apply compliance resources to investigate your claim.'

PCG 2025/D6 notes that methods other than those described, may be appropriate in certain circumstances. Taxpayers may adopt a different methodology which they consider more appropriate however, 'they will not be covered by the Guideline.'

Accordingly, the protection against the imposition of penalties and interest on any related tax shortfall that is covered by the Draft PCG will potentially not be covered if an alternate apportionment methodology not covered under the Draft PCG is applied.

Tip – document apportionment methodology adopted

Irrespective of the apportionment methodology adopted, documentary evidence of the apportionment calculation and the reasoning as to why the method chosen was 'fair and reasonable' will be essential.

Important

Before considering apportionment, individual non-business taxpayers should identify expenses that fully relate to producing rental income and which therefore do not require any apportionment.

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These expenses are fully deductible and include agent's fees and commissions; sharing economy platform fees; advertising costs for finding tenants; and cleaning and laundering costs specifically related to guest stays.

Apportionment must be carried out on a fair and reasonable basis, which will depend on:

- the period of time the property was rented out - referred to as the 'time-based method;' or
- the area of the property used for rental purposes - referred to as the 'area-based method.'

In some situations, it may be necessary to use a combination of both methods.

Time based method

The time-based method is used when a property is rented out for only part of the year, with the remainder being used privately or left vacant.

Under this method, deductions are calculated applying the following formula:

$$\frac{\text{Days used to produce income) + (Days held to produce income)}}{\text{Number of days in the income year you owned the property}} \times \text{Expenses}$$

PCG 2025/D6 emphasises that determining whether a property is 'available for rent on commercial terms' depends on an objective analysis of all the facts.

Factors that indicate that the property is objectively available for rent on commercial terms include:

- advertising which broadly exposes the property to potential tenants;
- rental rates and terms are similar to comparable properties in the same area; and
- requests to rent the property are actively monitored.

By contrast factors that indicate that the property is not available for rent on commercial terms will include the following:

- limited advertising to potential tenants (e.g., advertising is limited to the individual's workplace or by word-of-mouth);
- the property is blocked out for the private use of the individual and their family or friends (at less than market rates) during periods of likely rental demand;
- the location, condition or accessibility of the property means that it is unlikely that tenants will seek to rent it;
- unreasonable or stringent conditions are placed in renting out the property when compared to similar properties which reduces the likelihood of the property being rented out (e.g. setting the rent above the rate of comparable properties in the area, requiring prospective tenants to provide references for a short holiday stays as well as having conditions like 'no children' and 'no pets'); and
- request to rent the property are not actively monitored or refusals to rent the property to interested tenants are made without adequate reasons.

▶ **Example - Adapted from Example 3 of PCG 2025/D6 concerning the application of the time based method where a property is privately used by individual owners for part of the year whilst being actively rented out at other times**

Gail and Craig jointly own a rental property which they advertise for rent through a real estate agent.

Gail and Craig can show that the rental terms are similar to comparable properties in the area, and have instructed the real estate agent to actively monitor requests for rental so as to maximise occupancy for the property.

Gail and Craig use the property themselves for 30 days during the year, (with the effect that it is either rented or made available for rent during 335 days of the year).

During the year, Gail and Craig's expenses for the property are $36,629 which includes $1,828 for the agent's commission and the cost of advertising for tenants which fully relates to the period that it is rented out.

The $34,801 balance of the costs also includes interest on the funds borrowed to purchase the property, property insurance, maintenance costs, council rates, the decline in value of depreciating assets and capital works deductions.

Gail and Craig claim the full $1,828 as a deduction for the agent's commission and costs of advertising for tenants, and claim a proportion of other expenses of $34,801 to the extent they relate to the assessable income derived based on the time-based method set out below.

(Days used to produce income) + (Days held to produce income) X Expenses

Number of days in the income year you owned the property

$$= \frac{335}{365} \times \$34{,}801 = \$31{,}904 \text{ share of expenses is deductible}$$

Important

The above indicators as to when a property is considered not to be available for rent, contain a number of broad statements worthy of challenge as set out below:

- Setting rates above those of comparable properties: whether properties are 'comparable' is ultimately a matter of opinion. Owners may hold the view that there are no comparable properties for this purpose in which case a qualified third party should be engaged to confirm and explain that view and also to assess what is a market value rental.
- Requiring references from prospective tenants: it is entirely reasonable that owners take action to protect their asset by screening prospective tenants. The key would seem to be the 'reasonableness' of the steps taken; provided that standard can be satisfied, and the process is transparent, a case can surely be made that such action should not diminish the argument that a home is available for rental; and
- Making part of the property inaccessible to tenants: a blanket statement such as this does not recognise the extent to which individual circumstances may differ. For example, assume a substantial multi-roomed home made a room inaccessible to tenants as it contained family heirlooms or a valuable asset not associated with the other operations of the house. In these circumstances why should those facts lead to a conclusion that the home is not available for rent?

The lack of clarity in PCG 2025/D6 will inevitably place professional advisors in a position where they will be required to interpret various vague assertions, such as those described above, in order to properly apply the Draft PCG especially in respect of holiday homes made available for rental under section 26-50.

⚠ Warning – renting a room in an individual's home

PCG 2025/D6 notes that: '… where you are renting out a room in your home, the number of days your property is unoccupied but available for rent on commercial terms will be zero. This is because when a room in your home is not being rented out, it is treated as being used privately as part of your home and is not considered available for rent on commercial terms.'

In some situations, this interpretation in relation to room-rental may be unreasonable.

For example, assume a discrete room within a home has its own entrance, is not otherwise used by the homeowners and is rented or genuinely held for rental purposes at all times.

The thrust of the Draft PCG is that specific facts and circumstances are crucial elements when interpreting the law and therefore a blanket assertion that in such circumstances a room 'is treated as being used privately' would seem unreasonable.

Area based method

Where only part of an individual's property is rented out to a tenant or is used to produce rental income it is necessary to apportion expenses to reflect that area of the property which is been used to produce income under the following formula:

$$\frac{A + (B/2)}{C} \times \text{Expenses incurred}$$

Where:

A is the floor area of the property solely occupied by the tenant;

B is the floor area of the common areas (such as the lounge, kitchen, balcony and gardens of the property); and

C is the floor area of the whole property.

▶ Example - Adapted from Example 5 of PCG 2025/D6 concerning shared property usage

Kim owns a 2-storey townhouse and rents out the bottom floor to a long-term tenant. They each have exclusive possession of their floor. They share the use of the gardens around the house.

The top floor has a large deck and is 55 square metres, the bottom floor is 45 square metres, and the gardens are 35 square metres.

Kim would work out her apportionment percentage as follows.

$$\frac{45 + (35 / 2)}{135} \times \frac{100}{1} = 46.3\%$$

Kim can claim 46.3% of the expenses as deductions related to the property.

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When deductions for a holiday home that is also used as a rental property will be denied under section 26-50

Section 26-50 of the ITAA 1997 was enacted to prevent taxpayers from using the tax system to subsidise their use of 'leisure facilities' which were used for their own recreation.

Accordingly, a leisure facility has been defined under section 26-50(2) of the ITAA 1997 to include land, a building, or part of a building or other structure, that is used (or held ready for use) for holidays or recreation.

It should be noted that the explanatory memorandum introducing the predecessor provision to s. 26-50, (being s. 51AB of the ITAA 1936), stated that the purpose of the provision was to prohibit the allowance of certain income tax deductions for expenditure relating to leisure facilities such as 'holiday cottages'.

Essentially, the ATO has adopted the view in the TR 2025/D1 that a rental property will be a leisure facility if it is a holiday home mainly used to derive rental income.

Accordingly, if an individual's holiday home is used as a rental property certain deductions relating to the ownership or maintenance of that property may be denied under section 26-50(1) unless an exception applies.

Common examples of such expenses include:

- interest on borrowings to finance the purchase and continuing ownership of the property;
- council rates and land tax; and
- repairs and maintenance.

By contrast expenses that do not relate to the ownership or maintenance of a holiday home are deductible to the extent they are incurred in gaining or producing rental income.

Examples of such losses and outgoings would typically include:

- agents commission and fees associated with the renting of the property;
- advertising for tenants;
- cleaning of the property;
- garden maintenance;
- repairs;
- owners corporation fees and charges; and
- liability and property insurance.

Mainly use of a holiday home to derive rental income

Section 26-50(1) will not apply to deny the above deductions if the holiday home is used mainly to produce assessable income in the nature of rents, lease premiums, licence fees or similar charges under section 26-50(3)(b)(ii) of the ITAA 1997.

The issue of whether a holiday home is mainly used to produce rental income will be determined based on a consideration of a number of factors including the following:

- the way that the holiday home is actually used;
- the period of time the holiday home is dedicated to an income producing use;
- the period of time the holiday home was used or held for private use; and
- the extent to which the holiday home is actually available or used as a rental property at a time when the use of such property is desirable for holiday pursuits, (such as during school holidays, public holidays or peak seasonal demand periods).

No single factor on its own will determine as to whether the holiday home is used for rental purposes as all circumstances must be considered in applying this test.

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Moreover, this is an objective factual test based on the pattern of use over time and is determined regardless of the subjective intention of the individual owner.

However, ownership and maintenance deductions in respect of a holiday home will not be denied under section 26-50(3) if at all times during the income year the holiday home is 'mainly' used to produce assessable income in the nature of rents, lease premiums, licence fees or similar charges.

Example - Adapted from Example 11 of TR 2025/D1 where ownership and maintenance costs will be deductible as the taxpayer's private use of the property was only minor

Eve owns a property in a seaside location and rents it out using a sharing economy platform.

Though there are other bookings during the year, most of her income is made during the peak summer season when the property is most desirable as a holiday destination.

During off-peak periods, when there are no bookings, Eve will occasionally use the property for one or two nights each year while she is on holiday.

As Eve uses the property for her holidays or recreation, it will be a holiday home.

However, Eve does not reserve the apartment for her private use at any time.

Accordingly, Eve would not be prevented from claiming deductions for expenses that relate to the ownership or use of her apartment because it is a holiday home, as she mainly uses it to produce income from rent.

She will still need to apportion her deductions to account for the nights she uses the property.

Example - Adapted from Example 12 of TR 2025/D1 where ownership and maintenance costs are denied as the holiday home was mainly used for private use

Carla, who lives with her family in Sydney, owns a beach house in the Whitsundays.

The beach house is rented out through an agent and is advertised year-round.

However, the beach house is always blocked out for use by Carla and her family and unavailable for rent during Easter, the Christmas and New Year period and school holidays.

Although those dates are not always used by the family, the property is not available for paying guests during these periods.

In addition, Carla rejects most applicants who attempt to rent the beach house and has, in the past, cancelled a couple of bookings so she could use it herself.

The beach house is rented out, on average, 5 days per year.

As the beach house is used by Carla for her (and her family) for holidays and recreation, it is a holiday home.

The beach house is a holiday home which is mainly used (or held for use) by Carla and her family, and the property is not used (or held for use) mainly to derive Carla's assessable income from rent.

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Carla must include any rent derived from the beach house in her assessable income but will be prevented from deducting any losses and outgoings relating to the ownership and maintenance of the beach house.

Similar outcomes will arise if Carla lets her friends stay either rent-free or at a below market rate.

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

Section 26-50(4) of the ITAA 1997 provides that if the leisure facility is used, or held for use, mainly in the course of carrying on a business for part of the income year, the individual owner of the property can deduct so much of the losses or outgoings as is reasonable.

However, the Draft Ruling provides that the main use will not be considered to change merely by a one-off use that is different from what is otherwise the main use, or due to the regular seasonal pattern of use of the home. Accordingly, there will only be a change in main use if there is a definite and sustained change in the pattern of how the home is used (or held for use) for the purposes of applying section 26-50(4).

Important

The Commissioner's interpretation of the term 'part of the income year' for the purposes of applying section 26-50(4) is very important.

It indicates that section 26-50(1) would apply to deny deductions where, for example, a holiday home was rented with reasonable frequency to arm's-length tenants for weekdays but reserved for use by the owner during weekends and major holiday periods such as Christmas.

The Commissioner would presumably argue that the interpolation of the owner's use on a regular basis throughout the year, is an indicator that there had been no 'definite and sustained change in the pattern of how your holiday home is used (or held for use).'

It would therefore seem that the Commissioner would reject the argument that it is the extent of rental income generated by the home which should be determinative rather than the mere availability of the home for personal use by the owner.

Perhaps the most concerning comment in the Draft Ruling as to 'use' in relation to a holiday home is that if a holiday home is advertised for rent for more than half of the days in the year, but is not available or used as a rental for all or most of the time when it is desirable as a holiday destination (such as during school holidays, public holidays or peak seasonal demand periods), that the main use for holding the holiday home throughout the year is not to produce assessable income.

It is difficult to reconcile this statement with the clear wording of section 26-50(4) where the 'main' use to which the home is put for 'part of the income year 'is the statutory test.

Hence, for the Commissioner to assert that the main use to which a home is put for, say, four (holiday) weeks of the year, determines its main use for the entirety of the year. It is envisaged that such a conclusion it likely to be challenged at some point.

In the interim professional advisors will have great difficulty applying the provision correctly as it will be necessary to distil and weigh up the various factors which the Draft Ruling indicates would generally be relevant as to the main use of the property.

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In some cases there may be no option but to pursue private rulings to obtain certainty (assuming the ruling is finalised as drafted).

Self-assessing application of section 26-50

Draft Practical Compliance Guideline PCG 2025/D7 sets out how the ATO will differentiate risk and how it manages that risk for a range of rental property arrangements to which section 26-50 may potentially apply.

The risk framework seeks to provide certainty as to how the ATO will:

- assess the level of risk regarding the claiming of deductions in particular rental property situations involving a holiday home;
- determine the level of engagement an individual non-business taxpayer can expect from the ATO; and
- allocate compliance resources to consider the application of section 26-50 to particular arrangements.

Applying the ATO's standard risk framework methodology the Draft Guideline allocates risk ratings on the now familiar coloured coded basis of green, amber and red zones respectively denoting low, medium and high risk categories as set out below.

Risk zone	Description and compliance approach
Green Zone **(Low Risk)**	The Commissioner would not have cause to apply compliance resources to consider the application of section 26-50 to arrangements in the green zone, other than to confirm that the features of the relevant scenario are present. Green zone arrangements are usually characterised by high level usage of a property to produce rents, lease premiums, licence fees or similar charges, combined with limited or no non-income-producing use. Factors that could point to a green zone arrangement can include, but are not limited to: • high levels of income-producing occupancy, particularly around peak holiday seasons where the property is most desirable as a holiday destination • limited personal or other non-commercial use of the property • prioritising deriving income from the property over other purposes • commercials terms for renting out the property • attempts to maximise income from the use of the property to derive rents, lease premiums, licence fees or similar charges.

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Amber Zone **(Medium Risk)**	If an individual's arrangement is in the amber zone, the Commissioner may have cause to apply compliance resources to consider the application of section 26-50. Amber zone arrangements usually have factors that point to lower commercial exploitation of a property to produce rents, lease premiums, licence fees or similar charges and an increase in other uses, most commonly, personal use. Factors that could point to an amber zone arrangement include, but are not limited to: • increased personal use of the property by the taxpayer and friends (for no cost or below market rates) • foregoing income generation from the property so it is available for personal use (whether that be actual use or mere availability for personal use) • using the property (or holding it as available) for personal non-income-producing use in peak income-producing periods • limited attempts to exploit the property to gain rents, lease premiums, licence fees or similar charges.
Red Zone **(High Risk)**	Arrangements in this zone will attract the ATO's attention and they may conduct further analysis of the facts and circumstances of the arrangement to consider the application of section 26-50 as a matter of priority. If further analysis confirms the facts and circumstances of your arrangement are high risk, the ATO may proceed to audit. Red zone arrangements for the purposes of section 26-50 are ones where there is little or no commercial exploitation of the property to produce income through rents, lease premiums, licence fees or similar charges and the non-income-producing use is usually prioritised. Factors that could point to a red zone arrangement include, but are not limited to: • The property having times blocked out for personal use each year, particularly during periods of high rental demand • Limited attempts to rent out the property • Major features of the property, or parts of property rented out, being inaccessible even when the property is being used by guests • Unreasonable restrictions being placed on potential renters, contributing to low overall occupancy • Limited or no attempt to increase occupancy to gain rents, lease premiums, licence fees or similar charges.

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Transitional ATO approach to holiday arrangements entered into before 12 November 2025

Appendix 2 of the Draft Ruling sets out the ATO's transitional compliance approach under which the ATO will not devote compliance resources to apply section 26-50 of the ITAA 1997 in respect of ownership and maintenance expenses incurred in relation to holiday homes that are rental properties where those expenses were incurred under an arrangement entered into before 12 November 2025.

The ATO is therefore giving notice to taxpayers that they should seek to ensure such arrangements become compliant with the terms of the Draft Ruling by 1 July 2026 where such an arrangement commenced prior to 12 November 2025.

In providing this transitional compliance approach the ATO acknowledges that it has not previously publicly expressed the view that section 26-50(1) can potentially apply to deny deductions to a non-business individual who owns a holiday home which is also a rental property.

However, the ATO also notes that where it is asked to issue or amend an assessment, or to issue a private ruling, that it will do so consistent with the terms of its interpretation of section 26-50 under the Draft Ruling.

> **Tip**
>
> When interpreting the transitional approach, the Commissioner will presumably require an 'arrangement' to be formally documented, such as by a lease or an exchange of written communications evidencing what was agreed prior to 12 November 2025.

Navigating the application of TR 2025/D1

Assuming that a holiday home has been used to derive rental income, what would be required in order to ensure that section 26-50 did not have application to deny deductions incurred in respect of ownership and maintenance of a holiday home, during income producing periods (assuming the ruling is finalised as drafted).

The following factors would typically be relevant:

- the availability of the home for rental should be advertised sufficiently broadly to reach a satisfactory proportion of potential tenants including using avenues such as online sharing platforms, estate agent businesses and general advertising within media outlets. It is a matter of judgement as to how this coverage can best be achieved but it may be that an appropriately experienced agent can provide useful advice in this regard.
- the home owner personally managing the rental process should not of itself be an impediment to demonstrating that a home has been held 'mainly' for the derivation of rental income. However, it would typically follow that this objective could be best achieved with the appointment of a professional agent to manage the process, including the search for, and interaction with, tenants and the administrative aspects of the arrangement. The work carried out by an independent agent may add some credibility to the argument that the home is genuinely available for rental. Owners instructions to the agent should also be documented.
- where the owner intends to occupy the home during certain parts of the year, this should be made clear to the agent who can then market the property accordingly. If the owner subsequently wished to utilise the property at other times, this should only occur if the home is unoccupied by tenants at the time. Noting such a situation within the agent's records would be important.
- the owner should avoid blocking out continuous periods for personal use during the year, such as, say, two weekends each month. Avoiding such arrangements would enhance

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the argument that for 'part of the income year' there has been a change in the main use to which the home is put (i.e., the property is made available for the personal use of the owner rather than the derivation of rental income). The owner should be made to clearly understand that increases in personal use of the home correlate with an increase in the likelihood of section 26-50 having application.

- if the owner wanted prospective tenants to be vetted, an approach which could be defended as being 'reasonable' should be instituted; if the strategy is driven by a particular reason or circumstance, this should be identified.
- rental charges should reflect market rates for similar properties (if any) in the same general location and other terms of the lease should similarly reflect normal arm's length arrangements, in the absence of special circumstances. Where such circumstances exist, they should be documented so that variations from the norm are explicable.

Rental expenses

The taxpayer can claim expenses relating to the rental property but only in relation to the period the property was rented or made available for rental such as when it is advertised for rent by an estate agent.

Immediately deductible expenses

Expenses for which an immediate deduction would be available include the following to the extent that they relate to the rental of the property:

- advertising for tenants;
- agent's commission for rent collection post-acquisition;
- bank charges;
- body corporate fees for ongoing administration and general maintenance, (but not to extent amount is paid to a special purpose fund to finance capital improvements);
- borrowing expenses (i.e. where the establishment fee if less than $100. Otherwise the borrowing cost must be amortised over the shorter of the loan term or 5 years on a pro rata daily basis);
- cleaning;
- costs of relocating tenants into temporary accommodation if property is unfit to occupy for a time:
- costs of attending a property investment seminar to the extent it relates to operating, or maximising the return from, existing investment properties;
- council rates;
- electricity and gas (including annual power guarantee payments made on a remote rental property);
- gardening and lawn mowing;
- insurance premiums (for building, contents, public liability and loss of rental income);
- interest (but not to the extent an original or refinanced borrowing partly relates to a non-income producing purpose or to a period when the property was not made genuinely available for rent);
- in-house audio and video service charges;
- land tax;
- lease document expenses (e.g. preparation and surrender of a lease);

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- legal costs (such as costs that relate to evicting a non-paying tenant; taking court action to recover unpaid rent and defending damages claims suffered by a third party on the rental property. However, legal costs for purchasing and selling a property or defending title to a property are non-allowable and should be included in the cost base of the property for CGT purposes);
- mortgage discharge expenses (including penalty interest payments where there is an early repayment of a loan and a penalty is imposed for the early discharge of the mortgage);
- pest control;
- rent paid (e.g. where the taxpayer rents the property and then subleases it to a tenant);
- repairs to the extent that repairs relates to wear and tear that occurred during the owner's period of ownership and did not result in any capital improvement. (It would therefore exclude any initial repairs to remedy defects on damage that existed at the time of acquisition which may be depreciable as capital works under Division 43 of the ITAA 1997 or capitalised as an improvement to the property under the cost base rules pursuant to section 110-25 of the ITAA 1997);
- secretarial and bookkeeping expenses;
- servicing expenses (e.g. servicing a water heater);
- security patrol fees;
- stationary and postage;
- tax-related expenses (provided by a recognised tax adviser for compliance or advisory services);
- telephone calls and rental; and
- water rates.

Tax alert – travelling to residential rental property

Travel expenses incurred by an individual (or a discretionary trust or an SMSF) which are related to inspecting, maintaining or collecting rent for a residential rental property are:

- non-deductible under section 26-31 of the ITAA 1997; and
- not included in the cost base of a property for CGT purposes.

Travel expenses include car expenses, airfares and meals and accommodation related to travel.

This integrity measure was designed to address the concern that some taxpayers claimed travel deductions without correctly apportioning those costs or fully claimed travel costs that were essentially for private travel purposes.

This measure does not prevent investors from using third parties like real estate agents for property management services as such expenses continue to be deductible.

Also, travel expenses incurred by those carrying on business of letting rental properties and providing property management services or expenses incurred by a company renting property are still deductible, (but the ATO limit the carrying on of a business of renting properties to circumstances where the business satisfies all the requirements of carrying on a business as set out under Taxation Ruling TR 97/11).

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Tax alert – interest or other holding costs incurred in holding vacant land

Section 26-102 of the ITAA 1997 denies deductions for losses or outgoings incurred from 1 July 2019 to the extent they relate to a taxpayer holding vacant land on which there is not a substantial or permanent structure in use or which is available for use.

Deductions will not be available for asset holding costs during a period in which the property is vacant which will include interest on borrowed funds, land tax, council rates and repairs.

However, such amounts may potentially be included in the third element of the cost base of the property where the requirements of section 110-25(4) are met where the property was acquired on or after 20 August 1991.

It should be noted that an individual owner of the property will not be subject to the above limits on deductibility where the taxpayer, (or an affiliate, spouse or child or a connected entity), used the land in carrying on a primary production or property development business or where the land became vacant due to exceptional circumstances (e.g. natural disaster or substantial building defect).

Moreover, the above prohibition on the deductibility of land holding costs will also not apply to corporate tax entities, superannuation funds (other than SMSFs), managed investment trusts and unit trusts or partnerships of which all the members are entities of the above types under section 26-102(5) (e.g. a partnership of companies).

For further details see section 26-102 and Taxation Ruling TR 2023/3 for further information including the meaning of a ‘substantial and permanent structure’.

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