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30 January 2026

Dear Penny,

Draft Taxation Ruling TR 2025/D1 Income Tax: rental property income and deductions for individuals who are not in business
Draft Practical Compliance Guideline PCG 2025/D6 Apportionment of rental property deductions – ATO compliance approach
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

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 176,000 members in over 100 countries and regions. We make this submission in response to the Australian Taxation Office (ATO)'s **TR 2025/D1** and **PCG 2025/D6** and **PCG 2025/D7**, on behalf of our members and the general public.

A central concern is that the draft guidance reflects a revised ATO interpretation rather than a legislative change, particularly in the application of section 26-50. Experience suggests that administrative reinterpretation alone may not drive significant changes in taxpayer behaviour. We therefore encourage the ATO to complement the draft guidance with simpler, more user-friendly materials to assist taxpayers in understanding and transitioning to the revised approach for holiday homes.

Draft Taxation Ruling TR 2025/D1

We consider that TR 2025/D1 should extend beyond individuals and provide clarity on how section 26-50 applies to non-individual taxpayers, including trusts and companies, which commonly hold holiday homes. The legislation does not limit the concept of a "leisure facility" by reference to the personal use of the owner or their associates, and the ruling should clearly explain whose use is relevant in these circumstances.

The draft ruling would also benefit from clearer explanations in several key areas, including:

- the distinction between investment and business income in the context of rental properties;
- the relevance of TR 97/11 to non-primary production activities;
- the interaction between rental deductions and the main residence capital gains tax exemption; and
- the timing and attribution of expenses such as land tax and jointly incurred costs.

Without these clarifications, the ruling risks increasing complexity and uncertainty for taxpayers seeking to comply.

Retrospective application and administrative consistency

CPA Australia is concerned about retrospective application risks, particularly given the ATO's acknowledgement that its prior public guidance adopted a less restrictive approach. The presence of examples in the ATO's Rental Properties Guide 2025 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.

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

PCG 2025/D6 – apportionment of rental deductions

We support the intent of PCG 2025/D6 in providing practical methods for apportioning rental deductions where properties are used for mixed private and income-producing purposes. However, the guidance should allow greater flexibility to reflect commercial reality, including circumstances where income generation varies significantly across the year. A purely time-based approach may not always result in a fair or reasonable outcome.

PCG 2025/D7 – "leisure facility" interpretation

PCG 2025/D7 represents the most significant concern. The draft guideline adopts a markedly more restrictive interpretation of what it means for a property to be used "mainly" to produce assessable income. By characterising certain holiday homes as "leisure facilities", the draft PCG would deny deductions for core ownership costs that have historically been deductible on an apportioned basis.

We question the correctness of this approach. In particular, the apparent adoption of a subjective test is difficult to reconcile with the legislative framework and the Explanatory Memorandum, which points to an objective assessment based on the inherent nature of the asset.

Please refer to the Appendix for our detailed discussions to the response to the consultation questions. If you have any queries, contact me at jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor at bill.leung@cpaaustralia.com.au.

Yours sincerely,

Jenny Wong
Tax Policy Lead

Appendix

Detailed response

1. **Draft Taxation Ruling TR 2025/D1**

The ruling should also cover non-individuals. 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. It may be that a trust (or a company) cannot use something for holidays or recreation. This is similar to the view in **TD 2022/1** that a company or trustee cannot feel love and affection. Section 26-50 does not define a leisure facility based on "your use" or "your or your associate's" use like the definition of personal use asset in section 108-20(2)(a). It simply refers to "use" in the general sense. The ATO guidance should explain whose use is being considered, especially where a non-individual is the owner of the property.

Paragraph 6

An explanation will need to be provided after the first sentence in the paragraph to explain that renting out property is generally regarded as investment income and not business income (see the ATO webpage here), i.e.:

"Your income from the letting of property to a tenant, or multiple tenants, will not typically amount to the carrying on of a business, as such activities are generally considered a form of investment rather than a business.

As the owner of rental properties, some of the factors that show you are carrying on a business of letting rental properties are the:

- significant size and scale of the rental property activities
- significant number of hours spent on the activities
- extensive personal involvement in the activities
- business-like manner in which the activities are planned, organised and carried on."

The paragraph then refers readers to **TR 97/11** Income Tax: am I carrying on a business of primary production? We submit it is necessary to explain the relevance of this ruling to rental properties. A sentence should be added at the end of the paragraph to better explain this taxation ruling as follows:

"There are eight indicators to determine whether a business is being carried on. These are listed in paragraph 13 of TR 97/11. Although the ruling refers to primary production, these are equally relevant to non-primary production activities." See **page 11** of ATO's 2025 Rental Properties Guide for including this sentence to explain why TR 97/11 is relevant.

Paragraph 9

The commentary on paragraph 9 about accessing the main residence capital gains tax exemption being compromised needs further explanation. The draft ruling should state how the law operates whether or not you have claimed deductions for costs of ownership (such as mortgage interest payments).

In paragraph 1 of **Taxation Determination 1999/66**, subsection 118-190(2) provides that a capital gain or capital loss that you would have made apart from section 118-190 from a CGT event which happens in relation to your dwelling is increased if you used it at any time for the purpose of producing assessable income. The capital gain or capital loss is increased by an amount that is reasonable having regard to the extent to which interest would have been deductible if you had borrowed money to acquire the dwelling.

This is a hypothetical test which assumes that you had borrowed money to acquire the dwelling and had incurred interest on the money borrowed. The law does not require the actual claim of mortgage interest to trigger a partial main residence exemption. We believe this paragraph warrants further clarification.

Paragraph 65

Paragraph 65 of TR 2025/D1 states that land tax is incurred when an assessment of tax is issued. This seems to be inconsistent with the view in **ATO ID 2010/192** 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. This comment in the ruling would appear to contradict accepted practice regarding the timing of land tax deductions.

Paragraph 66

Para 65 of TR 2025/D1 should further clarify what it means for expenses to be "attributed to each co-owner". If all co-owners are jointly liable, are they entitled to a deduction for their share even if only one of them actually paid the amount? Does one co-owner need to re-imburse the other co-owner to obtain their share of the deduction?

Example 6

The example refers to renting to family/relatives at a non-arm's length rate. The example should add the sentence:

"When you rent your property below market rates the deductions you can claim are limited to the amount of rent received."

This is to align the draft tax ruling with existing ATO public web guidance and publications (see for example, see **page 24** of ATO's Rental properties guide 2025). It also aligns with paragraphs 41 and 42 of the draft PCG 2025/D6 Apportionment of rental property deductions – ATO compliance approach. It is also important to emphasise and put a cap and limit the amount of deduction claim when a property is rented out at below market rates. The taxation ruling should expressly refer to this.

Example 10

The example states:

"Cho ensures that the apartment is fully rented out for the peak seasons, maximises income at all times and treats the apartments solely as an investment."

We consider this framing to be unrealistic and potentially misleading. Even where a taxpayer acts on a fully commercial basis, it is not possible to ensure that a rental property will be fully occupied during peak periods year after year, as occupancy is influenced by market conditions beyond the taxpayer's control.

The example would be clearer and more consistent with commercial reality if it instead focused on the absence of private use and the income-producing purpose of the property. For example:

"Consistent with a non-holiday rental property, where there is no private use and the holiday home is held and used solely to produce assessable rental income, Cho should not be precluded from claiming deductions for expenses, notwithstanding periods of vacancy."

2. Retrospective application uncertainty

The ATO acknowledges that its previous public guidance on this section was less strict. Consequently, in Appendix 2 of TR 2025/D1, it will not apply compliance resources to review whether section 26-50 applies to expenses incurred before 1 July 2026, provided those expenses relate to arrangements entered into before 12 November 2025.

However, **PS LA 2011/27** *Determining whether the ATO's views of the law should be applied prospectively only* provides guidance to the ATO as to when they should apply their views of the law prospectively. Notwithstanding this, the ATO's Rental Property Guide 2025 includes an example that is inconsistent with the views expressed in the draft guidance in relation to holiday homes.

In particular, *Example 11* under **Rental Expenses** in the Guide appears to contradict the draft ATO position. We consider this inconsistency to be evidence of an established ATO administrative practice that

permits taxpayers to claim proportionate deductions for expenses such as interest, property insurance, council rates, and repairs and maintenance where the property is held for income-producing purposes.

By contrast, under a strict application of section 26-50 now proposed, a holiday homeowner would not be allowed to claim any of these expenses for deduction.

The ruling is proposed to apply both before and after its issue date.

The ATO has already signaled a degree of prospective application. In Appendix 2 of TR 2025/D1, the ATO stated it will not apply compliance resources to review whether section 26-50 applies to expenses incurred before 1 July 2026, provided the arrangements were entered into before 12 November 2025.

However, based on PS LA 2011/27, there is a strong argument that the ATO's updated views on holiday rentals should apply only on a prospective basis because the ATO has arguably "facilitated or contributed" to the current industry practice through its prior publications and conduct.

3. PCG 2025/D6

The PCG provides a framework for taxpayers to "fairly and reasonably" apportion rental property deductions when a property is used for both private and income-producing purposes. The guideline outlines specific methods the Commissioner accepts to keep property owners within the "compliance comfort zone" which included the **Time-based method** where expenses are split based on the number of days the property was rented versus used privately.

- **Area-based:** Deductions are allocated according to the percentage of the floor area dedicated to rental activity (e.g., renting a single room).
- **Combined:** Used for complex scenarios, such as short-stay rentals where both the area and the specific rental period vary.

The ATO's pre-26-50 views were a person may occupy the property over the peak period and only apportion deductions on a time basis. It seems fairer in that case to deny a higher proportion of deductions for the private use. It may apply in reverse where the person occupies it only in non-peak (due to low demand etc... during that period) but apportions on a time basis so loses a higher proportion of deductions.

For example:

If $100 rent was derived in July but $200 in December, we suggest two third of the expenses should be deductible, as most of the income is attributable to the December period.

4. PCG 2025/D7

PCG 2025/D7 adopts a significantly more restrictive interpretation of what it means for a property to be used “mainly” for the purpose of producing assessable income. Under the draft PCG, where the ATO characterises a holiday home as being primarily a “leisure facility” for the owner’s use, rather than a genuine income-producing asset, key ownership costs including loan interest, council rates and land tax may be denied under section 26-50.

This represents a departure from the ATO’s existing administrative approach to the deductibility of holiday homes. Under that approach, ownership costs are generally deductible, with apportionment required where the property has mixed use, based on the number of days it is rented or otherwise available for rent during the income year. The draft PCG therefore challenges long-standing and previously accepted principles regarding the apportionment of expenses for mixed-use assets.

We question the correctness of the ATO’s interpretation, which appears to apply a subjective test in determining whether a property constitutes a “leisure facility”. For example, the draft PCG suggests that even a small apartment in the Melbourne CBD may be characterised as a leisure facility if it is used by the owners during holidays. This approach is difficult to reconcile with the Explanatory Memorandum (EM) to former section 51AB, which provides examples of assets that are inherently leisure-oriented in nature, such as seaside cottages, squash courts, swimming pools, tennis courts, bowling greens, golf courses, ski runs, fishing shacks and holiday cottages.

Further, the structure of the statutory exceptions including section 26-50(3)(a) supports the view that the test is intended to be objective. The EM (at page 42) explains that an exception would be required, for example, for an owner of a squash court who is in the business of hiring it out. If a subjective test were intended, such an exception would arguably be unnecessary, as a purely commercial asset that is never used for the owner's recreation would not constitute a leisure facility in the first place.

In our view, the draft PCG risks adopting an overly broad interpretation of section 26-50, effectively recharacterising certain properties as leisure facilities in circumstances where it may be difficult to assess the extent to which they are genuinely held for rent at different times during the year. This approach may unduly expand the scope for denying deductions for holding costs, beyond what was contemplated by the legislation. Ultimately, it remains uncertain whether the ATO's interpretation and application of section 26-50, as set out in PCG 2025/D7, would be supported by judicial authority.