

Income from business

*Receipts may constitute OI, exp may be deductible => Losses can be used as tax loss for any other tax purposes

Vs Hobby (Receipts X income, exp X ded)

Vs Investment (Receipts from sale of inv X OI, some exp X ded – CG provisions) => Losses from inv can only be used as tax loss against other inv

- Definition under s995-1(1)
 - includes any profession, trade, employment, vocation or calling
 - does not include occupation as an employee
 - NB: There may be some rare case where income from employment will constitute business income:

Spriggs (football) & Riddell (rugby player) (incurred management fee in negotiation of employment contracts- yes employment can be business activities, when contract X just employment contract – included T&C regarding promotional activities, so management fee were incurred in gaining/ producing AI as there was sufficient connection betw man fees & production of business income)

- 2 issues:
 - (i) Identify whether a business exists
 - (ii) Identify whether business has commenced/ ended

Q1: Normal proceeds from business?

S1: Establish existence of a business [Indicators of a business activity: TR 1997/11(farming), TR 2005/1(artist's business)]

- ❖ No one factor is decisive; need to examine overall circumstances: Evans
- ❖ Having **full-time employment** does not preclude the activity from being a business: Ferguson
- ❖ TP may **delegate** many of the business-like activities to a manager yet still be considered as running a business: Ferguson; Walker
- ❖ Can still be a business even if it is **conducted inefficiently** or mistakes are made: Thomas
- ****Profit-making intention:** Ferguson; Walker; Thomas
(Objective test! By looking at facts & circumstances, subjective intention X relevant)
 - TP's subjective intention is irrelevant
 - Not necessary to show an actual profit made to show such intent
 - Lack of profit-making intention does not necessarily preclude there being a business; it is **important but not essential** – hard to argue not when there is profit-making intention: Ferguson; Stone
- **Size & scale** of activities
 - Does not exclude small activities from being a business: Walker ; Thomas
 - But must look in the context of the type of activity: Ferguson
- **Repetition & regularity** of transactions and activities: Walker
 - But a business could involve a single transaction & every business must commence with a single transaction: Ferguson

- Whether a **commercial** approach is taken (vs sales to relatives/ friends)
 - Seeking professional advice before/during operation: Thomas
 - Exploring markets for produce: Walker
 - Produce is more than that needed for domestic purpose: Thomas

*Selling on internet more likely, by word of mouth less likely

- **Organisation & system** of activities: Ferguson
 - Degree of planning, amount of time devoted, record-keeping: Walker
- Has knowledge/ skill
- Not a hobby, recreation/ sporting activity
- Business plan exists
- Commercial premises

Common Examples:

A) Primary Production

- **Ferguson** [purchased rural land – intend to establish cattle production business for retirement – even though small & preliminary to intended future business – Full Fed Court: Business – Factors: (i) Profit-making purpose important, X essential (ii) Rep & reg considered, but there might be single trans (iii) Org. & businesslike approach w appropriate record keeping (iv) full-time job X inconsistent – (v) Op. size & capital amount relevant, but must look @ context of type of activity – hobby may have considerable effect & resources (vi) Activities > preparation to begin a future business]
- **Walker** [real estate agent, breeding Angora goats – even though size relevant, small operation can be business if sufficient other business-like characteristics: (i) Partially supported by profit-making intention (ii) Rep. & reg. – number of years (iii) Op. conducted in business-like manner (keeping of acc, joining Angora Breeding Society, reading relevant journal & informed about market) – try to acquire skill *Irrelevant using someone else/ full time job]
- **Thomas** [business/ hobby?? - barrister, tree planting: business; (i) Size of tree planting > private use (ii) Sought technical advice *X matter about size/ main income activity/ skill (even though X likely to have significant income & agri X common]

B) Gambling cases

- Need to be significant level of commerciality, regularity & systematic betting, large amount of money wagered: Trautwein [High Court: TP's gambling activities = part of racehorse business, hence earnings – Main factor: gambling closely associated & integrated w his horse-racing business – Other factors: (i) size of bets (ii) systematic & organized approach (iii) Commitment of substantial amount of money & time to betting (iv) Emp. of other people to place bets & winning]
- More likely to be biz if gambler associated w other related activities: Trautwein; IT 2655
 [But Martin – Gambling X business even though associated w horse breeding – HC: X business, but pursuing a recreational pastime – despite large no. of bets, system in betting, other interests in horse racing]

*Strong public sentiment to discourage gambling

- **BUT** unlikely to be held as a business when **element of chance** is predominant in leading to the wins (just a pursuit of pleasure):

Evans [X business due to lack of systematic approach – X place bet w a bookmarker & often wagered on long-odd bets – earned over \$800k from betting on horse racing over 5 yr period];

Babka [Following factors X mean in business: large amount of time, use betting system, keep detailed record];

IT 2655 [Very unlikely a TP will be found to be carrying on a business as gambling]

**But Punters' club – could be business, yet to be decided – a group of ind very involved in gambling*

- **BUT** Gambling was held **NOT** a business even though
 - Large scale: *Martin; Brajkovich*
 - Regular & sustained: *Martin; Evans*
 - Systematic: *Martin; Babka*
 - Significant devotion of time: *Babka*
 - Association with other related activities: *Martin*
 - No other source of income: *Babka*

C) Sportspeople (Business vs. recreational pursuit)

*Refer to Income from services

- Conduct an objective test on **profit-making intention** (though not conclusive) & other indicators of business (particularly sponsorship deals):

Stone [HC: Since she accepted sponsorship payment = income, must be carrying out a business – as the only way sponsorship payment = income is due to her carrying on business – TP argued intention = pursuit of excellence, X profit making but went out to get sponsorship – Objectively, turned skill into profit – hence profit making intention (X matter actual intention) – So the rest of amounts deemed income from business as well]