

	income in the ordinary meaning, or an amount that can be considered AY from provisions of ITAA.	are under agreement to form periodical, regular payment, or sportsman has the expectation that this is the case. Where a person's sporting activities constitute a pastime or hobby rather than an income-producing activity, money and other efits received from the pursuit of that pastime or hobby are not assessable income, nor are the expenses allowable deductions	
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### **TOPIC 3 – Income v Capital**

<b>Case Name</b>	<b>Facts</b>	<b>Held</b>	<b>Principle</b>
<i>Evans v FCT</i> (1989) 20 ATR 922	Commissioner alleged the taxpayer was a professional gambler for the income tax years 1977 to 1981 inclusive and assessed his gambling winnings on an asset betterment basis. As a consequence, the taxpayer received amended assessments pursuant to s 167 of the <i>Income Tax Assessment Act</i> for the tax years 1977 to 1979. In the taxpayer's income tax returns for the 1977 and 1978 tax years he included a note declaring his interest in horseracing and greyhound racing as a hobby and an estimate of his winnings. During period in question, Evans carried on variety of businesses earning employee income as assessable income.	<p>Taxpayer not a professional punter as his gambling lacked the essential element of system or organisation).</p> <p>The test of whether a business of gambling, or for that matter any business, is carried on will be largely objective, determined by reference to the nature and extent of the activities involved.</p> <ul style="list-style-type: none"> <li>- For a punter to be held to be carrying on a business of gambling it is necessary for his activities of betting to be systematically conducted so as to get the most favourable odds obtainable: at 942-3.</li> <li>- Volume of punting and size of bets are not determinative of the outcome, although neither can they be said to be irrelevant</li> </ul> <p>(v) The taxpayer was not a professional punter because his gambling activities lacked the element of system or organisation which is a necessary characteristic of a business. The</p>	Whether a business is being carried on is a question of fact to be determined in an objective manner on the specific facts of each case:

			taxpayer's gambling was not undertaken in accordance with a pre-formulated plan but as the mood took him. He did not maintain an office or employ any staff, he did not keep any records, he did not use a computer or subscribe to any tipping or information services and he did not extensively study the form. He had not allocated capital with which to conduct his activity and kept no records of his winnings or losses. These facts together with the fact that he intended to wager predominantly with the TAB or the on-course totalisator were significant factors in leading to the decision that his gambling activities did not constitute a business.	
<i>Thomas v FCT</i> (1972) 3 ATR 371	Barrister carried out 'business' producing timber on his property, with a long lead time and anticipated long term profit of \$3000 per year, but did so in less than competent manner. Further, he used his home on that same property to carry out his business, and employed his wife as his secretary for a few hours each week.	Held that this WAS a business, even if it wasn't a competently run one that made no income in that particular year. As such, any deductible expenses relevant to the business could be offset against his tax.  He was not merely preparing to carry out a business – the land had already been so prepared years earlier by him, and now it was actively engaged in the production of timber, albeit not yet profitably.	Barrister carrying on a primary production business on 7.5 acres was a business.	
<i>Ferguson v FCT</i> (1979) 9 ATR 873	whether or not a man who paid a monthly fee to lease cattle to carry out breeding and who later intended to use these cattle in grazing on a property was carrying on a business at this stage	activities of the taxpayer had on the whole, a commercial flavour, were conducted systematically and there was nothing haphazard or disorganized in the way in which the activities were carried out 'the nature of activities, particularly whether they have a profit-making purpose, may be important', <sup>64</sup> went on to declare that an immediate purpose of profit making in a particular income year is not essential. This	Whether a business is being carried on is a question of fact to be determined in an objective manner on the specific facts of each case	