	○ Employment of other people to place bets and collect winnings

SPORTSPEOPLE'S EARNINGS

- NOTE: Team-based professional sports people are normally paid as employees which may limit tax deductions compared to a professional sports person judged to be operating a business

- Taxpayers that compete in non-team sports (e.g. tennis) at high levels of competition, typically with related commercial activities, are most likely carrying on a business (as opposed to being employees) (Stone v FCT)

Stone v FCT (2005) 59 ATR 50- activities as a whole considered a business	
FACTS	- Stone was a javelin thrower and full-time employee in the QLD police force - Stone earned $136,000 from sporting pursuits- consisted of prize money, grants from QLD sports academy, appearance fees, and sponsorship fees
RATIO	HELD: Stone was carrying on a business re her sporting activities and all cash receipts from this business were ordinary income - Though Stone lacked a clear profit motive, her activities indicated that she was carrying on a business - Court mainly influenced by the fact that Stone had entered into sponsorship deals

INVESTMENT ACTIVITIES

- Where investment income is classified as property income- the acquisition of the underlying investments (such as shares or rental property) will be treated as capital and the sale will not be ordinary income
- If the investment activity is regarded as a business, the underlying investment (e.g. shares) will be regarded as trading stock and treated as ordinary income, rather than as capital

Greig v FCT [2020] FCAFC 25	
FACTS	- The taxpayer made hundreds of separate share transactions over a 2-year period making a total loss of $11,000,000 - Greig subsequently claimed a deduction for the loss on the basis that he was in the business of share trading
RATIO	HELD: The Court found that the shares were NOT capital in nature and therefore the loss was deductible under s8.1 ITAA 1997 **KEY FACTORS: The taxpayer acted in a businesslike manner with a profit-making intention on a large scale**

COMMENCEMENT AND TERMINATION OF THE BUSINESS

- **Pre-commencement expenses-** Softwood Pulp and Paper Ltd v FCT **(expenses incurred before income-earning activities commenced were NOT deductible under the law)**

- Determine whether the business is being “carried on” during the relevant tax period
- Expenses incurred BEFORE business commenced- not deductible

KEY QUESTION: Has the taxpayer “committed” to commencing the business or merely deciding whether or not to go ahead? (Softwood Pulp and Paper Ltd v FCT)

FCT v Osborne (1990) 21 ATR 888	
FACTS	- The taxpayer leases land for the purpose of planting and growing chestnuts - The taxpayer entered into a contract to buy chestnut plants and seedlings and also applied fertiliser to the soil ready for planting - After a year the taxpayer decided to abandon the chestnut venture because it was not economically feasible - The venture was abandoned before any seedlings were planted
RATIO	HELD: A business had already commenced when the taxpayer had taken steps to fertilise the land as this showed they were committed to commencing the business

2. CONSIDER WHETHER THE PARTICULAR RECEIPTS ARE IN FACT THE NORMAL PROCEEDS OF CARRYING ON THAT BUSINESS

IF NOT- May still be assessable income as an isolated/extraordinary transaction, where the transaction:

1. **Forms a business itself (FCT v Whitfords Beach- relevant to property developer cases);**
2. **Falls under the first strand of FCT v Myer Emporium; or**
3. **Falls under the second strand of FCT v Myer Emporium**

TR92/3- Considers whether profits from isolated transactions are assessable income

Receipts will be **normal business proceeds** when they are a product of:

1. A transaction that is **part of the ordinary business activity**; or
2. A transaction that is an **ordinary incident of the business activities** (consider the frequency and magnitude of the activity that generated the receipt (Memorex Pty Ltd v FCT 1987)

FCT v Merv Brown Pty Ltd (1985)	
HELD	The nature of the business was limited to the sale of imported clothing and material, and **the sale of quotas was infrequent and therefore not part of that business.** If the sale of quotas was a regular activity, then it may have been included in the nature of the business HELD: the taxpayer’s business was identified as the purchase and sale of clothing and material, and therefore the sale of imported quotas was not normal proceeds

ISOLATED TRANSACTION

- **FCT v Whitfords Beach**

FCT v Whitfords Beach

FACTS	• Taxpayer was a company (formed by fishermen) that had acquired land to provide fishermen with access to fishing shacks on the beach. Land value subsequently increased. • Developers bought shares in the company (i.e., change of control), and had the company develop/subdivide and sell the land.
HELD	• Court found that following the change of control, the company had ***ventured into a land development business (the development and sale was so extensive that it had the characteristics of a business)*** • Taxpayer was assessed on the profit. • The Court found that profit-making intention was central. **Even though the transaction was isolated, it was still treated as part of a business-like activity because the company was engaged in buying land with the intention of selling it for a profit** • **Distinguish from Scottish Mining Co Ltd v FCT – where a coal estate was drained, and the taxpayer renovated the land and realised profits from building a school, other institutions on land. Found there was a realisation of an asset of a CAPITAL nature.**

EXTRAORDINARY TRANSACTION

- **FCT v Myer Emporium**

<u>1st strand of Myer:</u>

1. There was a **business operation** (automatically satisfied for extraordinary transactions, as these are undertaken by businesses) or commercial transaction (outside normal proceeds of the business)
2. Profit-making purpose at the time of entering the transaction (need not be sole/dominant intention)
3. Profit was made by means consistent with original intention (if there was more than one intention, the way the profit was made need only be consistent with one of those)

<u>2nd strand of Myer:</u>

- Similar to the compensation principle, i.e. – the compensation payment takes the same character (e.g. income or capital) as the amount that it replaces.

FCT v Myer Emporium	
FACTS	• Myer made a loan of $80 million to its subsidiary, Myer Finance. Myer Finance was to pay Myer interest at 12.5% per year i.e. 10m per year. • Myer assigned the right to the interest to Citicorp Ltd in return for $45m. • Citicorp had accumulated tax losses, which would allow it to avoid paying tax on the $10m per year. • Commissioner of Taxation held that the $45m was assessable. Myer appealed this.
HELD	**HELD TO BE ASSESSABLE BASED ON 1ST STRAND CRITERIA**

	- Gain made otherwise than in the ordinary course of carrying on a business which **nevertheless arises from a transaction entered into by the taxpayer (Myer) with the intention or purpose of making a profit or gain… (will) generally speaking be income** - The fact that the assignment of the right to interest was novel in the sense that it was the first time Myer had entered into such an arrangement (one-off) did NOT take it outside the course of carrying on Myer's profit making business

Westfield Ltd v FCT	
HELD	This case considered the issue of extraordinary transactions and whether or not the sale of land that was originally purchased with the intention of development was assessable as ordinary income or was capital in nature.

DISTINCTION WITH CAPITAL

NOTE: Is the amount income from business, OR is it realisation of a capital asset (i.e. capital)? (Scottish Australian Mining Co v FCT; FCT v Whitfords Beach)

- Ultimately- consider motivations, intentions, chain of events of taxpayer- will determine whether receipt is on capital account OR ordinary income

- The realisation of a capital asset (i.e. loss/gain on sale of a capital asset) will not be classified as ordinary income. May consider:
  - Banking/insurance/investment companies: London Australia Investment v FCT
  - Lease incentive payments: FCT v Cooling; FCT v Montgomery
  - Intellectual Property and 'know-how': Rolls Royce v Jeffrey; Moriarty v Evans Medical Supplies

INCOME FROM PROPERTY

- **RENT**
- **INTEREST (s6.5 ITAA 1997)**
- **DIVIDENDS**
- **ROYALTIES (s15.20 ITAA 1997) – largely STATUTORY INCOME (s10.5 ITAA)**
- **S15.20- definition of royalty; s995- definition of royalty in 1936 Act**
- **ANNUITIES**

- Application of the "flow" concept of ordinary income
- Receipts such as interest, rent, royalties and dividends that "flow" from the passive ownership of capital investments will be ordinary income under s6.5 of ITAA 1997
- Following the "fruit and tree" analysis, these receipts are generated from capital without the capital being diminished in any way

NOTE: Income earned from the passive ownership of capital is generally known as PROPERTY INCOME, distinguished with the gains realised on the sale of property itself (this may be assessable as business income, subject to CGT)