TR 2026/D2 - Income tax: carrying on a business by an individual

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Status: **draft only – for comment**

Draft Taxation Ruling

Income tax: carrying on a business by an individual

Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Ruling is about

1. This draft Ruling[1] provides guidance for individuals[2] to determine whether they are carrying on a business for the purposes of sections 6-5 and 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

2. Specifically, this Ruling sets out the indicators the Commissioner considers relevant to determine whether an activity you have undertaken, as an individual, is a business as opposed to an investment or a hobby. This is an important distinction as the taxation treatment of your activities will vary depending on this classification.

3. The indicators in this Ruling are well established and are consistent with the indicators set out in Taxation Ruling TR 97/11 *Income tax: am I carrying on a business of primary production?* which are relevant to determining whether a taxpayer carries on a business of primary production for tax purposes. This Ruling does not replace the more specific advice provided in TR 97/11 and other rulings on this topic and should be read in conjunction with them.

[1] All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

[2] Individuals in a partnership can also use this Ruling to determine whether they are carrying on a business in their own right. This Ruling cannot be used to determine whether there is a 'partnership' in accordance with the definition in subsection 995-1(1) of the ITAA 1997 on the basis that those individuals are carrying on a business as partners.

4. Further, this Ruling does not consider:

- whether amounts you receive will be assessable income, or whether you are entitled to certain deductions, on a basis other than due to carrying on a business[3]
- circumstances where you have engaged others to do work on your behalf through agency agreements or where you would be a principal with limited involvement in the business activity
- whether an activity or series of activities you undertake may be an enterprise for goods and services tax (GST) purposes even if it is not a business.

5. The examples in this Ruling each consider the application of an individual indicator that is relevant to carrying on a business. More comprehensive case studies, which consider the relevant indicators in combination to determine whether an individual is carrying on a business, are provided in Appendix 2 to this Ruling.

6. All further legislative references in this Ruling are to the ITAA 1997, unless otherwise indicated.

Ruling

Carrying on a business

7. When you carry on a business, amounts you receive from your business activities are generally assessable as income according to ordinary concepts (ordinary income) under section 6-5.

8. Subsection 6-5(2) provides that the assessable income of an Australian resident for tax purposes includes ordinary income derived directly or indirectly from all sources, whether in or out of Australia, during an income year.

9. Losses or outgoings that are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income are deductible under section 8-1.[4]

10. Subsection 995-1(1) does not define the term 'carrying on a business'. Subsection 995-1(1) defines 'business' to 'include any profession, trade, employment, vocation or calling, but does not include occupation as an employee'. This definition is broad and can include a wide variety of activities, while excluding any activity undertaken as an employee.

11. This inclusive definition provides limited guidance on how to determine if the activities you are undertaking amount to the carrying on of a business, or when that business starts and ends. However, there is considerable guidance in the common law.

[3] For example, on the basis that you have derived assessable income under section 6-5 of the ITAA 1997 or incurred a loss or outgoing that is deductible under paragraph 8-1(1)(a) of the ITAA 1997 as an employee. In particular, whether amounts derived by an individual are assessable as income from an isolated profit-making undertaking is outside the scope of this Ruling. For more information on this, see *Greig v Commissioner of Taxation* [2020] FCAFC 25 and Taxation Rulings TR 92/3 *Income tax: whether profits on isolated transactions are income* and TR 92/4 *Income tax: whether losses on isolated transactions are deductible*.

[4] Paragraph 8-1(1)(b).

12. The High Court has stated that a business '… is a course of conduct carried on for the purpose of profit and involves notions of continuity and repetition of actions'.[5]

13. Whether an activity or series of related activities constitutes the carrying on of a business is a question of fact[6], answered by the overall impression formed of the relevant activities with reference to the indicators of carrying on a business.[7] These indicators are set out at paragraph 14 of this Ruling.

Indicators of carrying on a business

14. To determine whether an activity or series of activities you carry on amounts to carrying on a business, the activity needs to be considered against the following indicators of carrying on a business, established by the courts:

- significant commercial purpose or character
- intention to carry on a business
- purpose and prospect of profit
- not a hobby or recreation
- organised and carried on in a business-like and systematic manner[8]
- size and scale, and
- repetition and regularity.

15. These indicators must be considered in combination and as a whole. The importance of each indicator will vary from case to case. Each case will turn on its own particular facts. No one indicator is decisive.[9] Determining whether you are carrying on a business involves a process of weighing all the relevant indicators.

16. Ultimately, whether your activity amounts to carrying on a business depends on the overall impression formed after assessing it against the relevant indicators.[10]

Significant commercial purpose or character

17. A key consideration is whether your activity demonstrates the necessary 'commercial flavour'[11] or has a 'significant commercial purpose'.[12]

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[5] *Commissioner of Taxation (Cth) v Murry* [1998] HCA 42 at [54], per Gaudron, McHugh, Gummow and Hayne JJ.
[6] *Brookton Co-operative Society Ltd v Federal Commissioner of Taxation* [1981] HCA 28, per Aickin J; *Spriggs v Commissioner of Taxation; Riddell v Commissioner of Taxation* [2009] HCA 22 (*Spriggs*) at [59].
[7] *Martin v Federal Commissioner of Taxation* [1953] HCA 100 at [10], per Webb J; *Spriggs* at [59].
[8] Note, this indicator combines 2 indicators that are considered as separate indicators in TR 97/11. That is, this indicator includes considering 'whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business'.
[9] *Evans, R.J. v Commissioner of Taxation* [1989] FCA 278.
[10] *Martin v Federal Commissioner of Taxation* [1953] HCA 100 at [10]; *Commissioner of Taxation v Morton* [2026] FCAFC 31.
[11] *Ferguson, Peter Ian Murdoch v The Commissioner of Taxation for the Commonwealth of Australia* [1979] FCA 51 (*Ferguson*), per Fisher J.
[12] *Thomas v Federal Commissioner of Taxation* 72 ATC 4094 (*Thomas*), per Walsh J. This concept was further discussed by Gibbs CJ and Stephen J in *Hope v Bathurst City Council* [1980] HCA 16.

18. Although no single indicator is determinative, the lack of a significant commercial purpose or character or a prospect of profit, will strongly influence the overall impression gained that a business is not being carried on.[13]

19. Whether an activity has a significant commercial purpose or character is a conclusion that will usually align with the result of considering the other business indicators described below.

Intention to carry on a business

20. It is relevant to determine if you have an intention to carry on a business.[14]

21. It is not necessary that the intention to carry on a business is expressly stated. It may be inferred objectively from the circumstances and your actions, including the way in which you have conducted an activity.[15] For example, where your activities are undertaken in a systematic and business-like manner for the purpose of generating income.

22. Having other sources of income or other employment does not mean that an activity you undertake is not, or is not intended to be, a business.[16]

Need to have started the activity

23. It is not enough for you to simply intend to carry on a business. You must have commenced the activities necessarily involved in that business to be carrying on a business.[17]

Change in intention

24. Your intention and purpose for undertaking an activity may change over time. This means that an activity that may have started as a hobby, recreational activity or other passive income earning activity, may evolve into a business activity at some later time. Similarly, you may intend to carry on business for a period but no longer hold this intention at a later time.

Example 1 – no intention to carry on a business

25. *Aaliyah undertakes a pottery course and sets up a small pottery studio with a potter's wheel at her home. In her spare time, she creates vases and bowls for her own enjoyment and to give as gifts to friends and family. On one occasion, she accepts a commission from an acquaintance to create some pieces for their wedding. The money she is paid to do this covers only the cost of the material needed to create the pieces and doesn't cover other costs like electricity or equipment used. Aaliyah undertakes pottery for her personal enjoyment rather than for a commercial purpose. Objectively, her activities do not demonstrate an intention to carry on a business.*

[13] *Commissioner of Taxation v Stone* [2005] HCA 21 (*Stone*).
[14] *Thomas*; *Inglis v Commissioner of Taxation* [1979] FCA 139 (*Inglis*), per Brennan J; *Inland Revenue Commissioners v Westleigh Estates Company Ltd* [1924] 1 KB 390 (*Westleigh*).
[15] *Stone*; *Graham v Commissioner of Inland Revenue* [1961] NZLR 994.
[16] *Ferguson.*
[17] *Inglis*.

Example 2 – implied intention to carry on a business

26. *Bevan works as a bank teller, but also represents Australia in shot-put. He competes in multiple Olympic and Commonwealth Games. During his time as an elite athlete, he receives prize money, grants from federal and state authorities and sponsorships from businesses and appearance fees in relation to his athletics. He employs a manager to seek and negotiate sponsorship and manage appearances on his behalf. This is carried out in a way that allows him to profit and earn a living from his sport and associated activities. Bevan never turns his mind to whether he is in business, or if he intends to be in business.*

27. *While Bevan did not expressly turn his mind to whether he intended to carry on a business, that intention can be objectively inferred from the way he conducted his activities. His activities are undertaken in a systematic and business-like manner for the purpose of generating income from his sporting activities and associated commercial opportunities.*

28. *If Bevan had merely received government grants or funding to offset the costs of training, travelling and competing, without undertaking the associated commercial activities described in paragraph 26 of this Ruling, this would be less likely to indicate an intention to carry on a business.*

Purpose and prospect of profit

29. Whether or not you undertake the activities for the purpose of profit is relevant in determining whether you are carrying on a business and whether it has the necessary commercial character.[18]

30. When assessing whether there is a profit-making purpose you should examine if there is a genuine prospect of profit.[19] The prospect of profit is highly significant when assessing if you are carrying on a business.[20]

31. Conversely, if the activities are carried out in a way where there is little or no real prospect of making a profit, it is unlikely that you can be said to have a profit-making purpose.[21]

What if you haven't yet made, or are never likely to make a profit?

32. Not having made a profit is not necessarily fatal to the finding of an intention to make a profit.[22] Activities that are objectively unlikely or not expected to make a profit in the short term can still have a profit-making purpose.[23] This can also be the case where you are prepared to make a loss in order to realise a business ambition. For example, a business can be operating at a loss as it builds scale and a customer base.

[18] *American Leaf Blending Co Sdn. Bhd v Director General of Inland Revenue* [1979] AC 676; *Westleigh*; *Commissioner of Taxation v Murry (Cth)* [1998] HCA 42 at [54]; *Whitfords Beach Pty Ltd v The Commissioner of Taxation for the Commonwealth of Australia* [1983] FCA 94, per Fisher J.

[19] *Westleigh*; *American Leaf Blending Co Sdn. Bhd v Director General of Inland Revenue* [1979] AC 676; *Hart v Commissioner of Taxation* [2003] FCAFC 105 (*Hart*); *Case H11* 76 ATC 59; *Nelson v Commissioner of Taxation* [2014] FCAFC 163.

[20] *Stone*.

[21] *Northern Engineering Pty Ltd v The Commissioner of Taxation* [1979] FCA 137; *Spassked Pty Limited v Commissioner of Taxation* [2003] FCAFC 282.

[22] *Ferguson.*

[23] *Ferguson*; *Tweddle v Federal Commissioner of Taxation* [1942] HCA 40 (*Tweddle*).

33. Where the prospects of turning a profit from an activity are low, you may still have an intention to make a profit.[24] However, whether this is so would require the presence of other indicators of carrying on a business in sufficient strength to outweigh any objective view that the activity ultimately does not have a prospect of making a profit.[25]

34. If you genuinely believe that an activity will become profitable, the fact that the objective evidence demonstrates that this is unlikely does not necessarily mean that a business is not being carried on.[26] However, where an activity is inherently unprofitable and is carried on in a way that objectively shows no intention to make a profit, the Courts have held that the activity is less likely to be a business, particularly if it continues on for longer that any reasonable person would persevere.[27]

Example 3 – no purpose or prospect of profit

35. *Callum is interested in video games and video game culture. When he has an opportunity to play, he often streams his gameplay and chats with viewers online.*

36. *He occasionally receives small donations from people watching him play, but he does not actively seek donations, or receive advertising revenue, and he does not charge subscription fees.*

37. *Considering his expenditure on equipment, software, and utilities, together with the limited donations he receives, Callum's activity has no realistic prospect of generating a profit. Callum undertakes the activity because of his interest in gaming and the gaming community. Objectively, the activity does not have a purpose or realistic prospect of profit.*

Alternative outcome

38. *However, if Callum sought to monetise the activity by obtaining advertising revenue, selling merchandise, and actively encouraging viewer donations, the activity may begin to demonstrate a purpose and prospect of profit. The presence of a purpose and prospect of profit would then be an indicator supporting a conclusion that Callum is carrying on a business.*

Example 4 – early year in loss

39. *Donatella is a qualified electrician who decides to provide electrical services directly to customers because she believes she can earn more income than she would as an employee electrician. She purchases tools and equipment, advertises her services and actively seeks new clients.*

40. *In her first year of trading, Donatella makes a small loss due to significant startup costs, including purchasing tools and equipment, fitting out her work vehicle, obtaining licences and insurances, advertising her services, and building a customer base. Absent these initial startup costs, she would have made a profit.*

41. *Donatella has a plan for growing her customer base, including negotiating multi-year service contracts with potential clients, and expects her revenue to increase once the initial startup costs have been met.*

[24] *Thomas*, per Walsh J.
[25] *Tweddle*.
[26] *Thomas*, per Walsh J.
[27] *Hart*.

42. *Although Donatella made a loss in her first year of trading due to startup costs, the activity has a genuine purpose and prospect of making a profit. The initial loss does not prevent her activity from having the character of a business.*

Not a hobby or recreation

43. A hobby is an activity or pastime pursued for pleasure or recreation and is not of a commercial nature. However, the fact that you enjoy or are passionate about the activity does not, of itself, prevent the activity from being carried on as a business.[28]

44. The pursuit of a hobby is not the carrying on of a business, even where considerable time, effort or expenditure is devoted to the activity.[29]

45. Hobbies and private recreational pursuits can encompass a wide variety of activities such as various sports or physical activity, arts or cultural practices, crafts, social activities and clubs, games and other leisure activities.[30] Sometimes the outgoings for these activities can be substantial and from time to time you may earn a small amount of income from them, but they are undertaken primarily for enjoyment and fulfilment, not to make a profit.

46. Activities that are commonly undertaken as hobbies or private recreational pursuits may, depending on the circumstances, be carried on as a business. In those cases, the activity must be distinguishable from the way it is ordinarily undertaken as a hobby or recreational pursuit.

47. For example, your activity can have a commercial character where you decide to commercially exploit the exercise of your talent or skills, and this decision is reflected in your overt and planned activities.[31]

48. What distinguishes a professional from an enthusiastic amateur is the intention of the professional to carry on as a business that which others frequently pursue merely as a hobby or by way of a pastime.[32]

49. There are activities that are neither hobbies nor businesses. However, amounts received from those activities may still be assessable income. For example, amounts derived from passive investments[33], isolated profit-making undertakings[34], and other income-producing activities[35] may be assessable despite not arising from the carrying on of a business.

50. Your activity is more likely to be characterised as a hobby or private recreational pursuit if at a point in time[36]:

- you are primarily motivated to continue the activity only because of your own personal enjoyment and fulfilment

[28] *Stone*; paragraph 14 of Taxation Ruling TR 2005/1 *Income tax: carrying on business as a professional artist.*
[29] *Ferguson*.
[30] See TR 2005/1.
[31] *Stone* at [71] and [74]. See also paragraphs 13 to 16 of TR 2005/1.
[32] Paragraph 14 of TR 2005/1.
[33] For more information on when a profit-making undertaking or scheme may give rise to assessable income, see paragraphs 27 to 30 of TR 92/3. See also paragraph 59 of Taxation Ruling TR 2019/1 *Income tax: when does a company carry on a business?*
[34] Paragraphs 33 to 37 of TR 92/3.
[35] See paragraphs 8 and 44 to 47 of TR 2005/1.
[36] See TR 2005/1.

- you are not under any contract, formal obligation or arrangement relating to your attendance, performance, timeframes or output
- you do not take steps to make the activity profitable or operate the activity profitably
- the hobby or private recreational pursuit is carried out on a small scale in a non-commercial way, and
- any amounts received from the activity are incidental to the activity or arise as a matter of convenience.

Example 5 – hobby becoming a business

51. *Emil works full time in a retail store. In his spare time, he runs an online video channel where he reviews skincare products that he purchases with his own money. He creates content because he enjoys skincare products and interacting with others who share that interest.*

52. *Over time, Emil's channel becomes more popular and begins generating opportunities to earn income through advertising and brand endorsements. In response, Emil decides to actively grow the channel and maximise its income earning potential. He engages an online marketing firm and appoints an agent to help generate commercial opportunities.*

53. *Emil signs sponsorship and endorsement deals, appears in promotional content for brands, offers exclusive content and early access to content for paid subscribers, enrols in advertising revenue and other creator rewards programs across multiple platforms, and actively seeks to increase the profitability of the channel.*

54. *Emil reduces his hours at his retail job and spends more time creating content and growing the channel. The channel and Emil's associated activities become profitable.*

55. *While Emil's video channel began as a hobby, the way he conducts the activity has changed over time. When he actively sought to generate income through advertising, sponsorships, subscriber revenue and other commercial arrangements, the activity moved beyond being a hobby and took on a commercial character.*

Example 6 – income producing but not in business

56. *Priya enjoys photography as a hobby and regularly posts photographs on social media. She occasionally sells prints of her photographs and receives small amounts of income. Priya does not advertise, seek commissions, maintain a client base or operate in a business-like manner. While the sale of the prints may result in assessable income as a profit-making undertaking, her activities are such that they cannot be characterised as a hobby, nor do they have the commercial character of a business.*

Organised and carried on in a business-like and systematic manner

57. How you have structured and organised your activity and whether you have conducted it in a business-like and systematic manner consistent with the carrying on of a business are indicators to consider in determining whether you are carrying on a business.

58. This indicator is particularly important where an activity is not clearly commercial in nature or cannot obviously be said to have a purpose and prospect of profit.

59. Some examples of undertakings which suggest that your activities are organised in a business-like manner include:

- good record-keeping practices
- formal, written contracts with suppliers and customers
- obtaining expert advice in relation to the conduct of your activities
- creating and following a business plan
- market research and forecasting, and
- maintaining relevant insurance.

60. However, consideration of this indicator will depend on the facts of the particular case, as you may still be carrying on a business despite any disorganisation.

61. It is also necessary to consider how you carry out your activities. You are more likely to be carrying on a business if you carry out your activities in a business-like manner. There is no single way in which activities must be carried on to be characterised as business-like. What is considered business-like will depend on the nature of the activity and the industry in which it is conducted. Accordingly, this indicator should be considered by reference to how similar activities are carried on by those conducting businesses in the relevant industry.[37]

62. If your activity is carried on in a similar manner to others who are carrying on a business involving comparable activities, it is more likely that the activity has the character of a business because it can be characterised as commercial or business-like in nature.[38] This is because it is generally expected that business activities will be carried on in a business-like and systematic manner rather than in an ad hoc manner.[39] Systematic approaches and not conducting activities in a disorganised or haphazard manner point towards a commercial undertaking.[40]

63. How you organise your business should be considered separately from how you carry out those activities. This is because an activity may be organised in a business-like manner, while the way it is carried out lacks the repetition, system, or commercial character ordinarily associated with a business.

Example 7 – activity is not carried on in a business-like and systematic manner

64. *Hong is interested in collectible trading cards and has started trying to make a profit from buying and selling them. Initially, she sells cards from her personal collection that she no longer wishes to keep. She occasionally attends swap meets and browses online listings, but most of her purchases are for her personal collection rather than resale. From time to time, she purchases cards which she later sells for profit.*

65. *Hong does not have a plan for how she will make money from the activity, does not regularly acquire cards for resale, and does not keep records of her purchases, sales, or*

[37] This indicator may carry less weight where the activity is innovative or novel, and there are no established industry norms or comparable business activities against which it can readily be assessed. Refer to paragraphs 71 and 72 of this Ruling.
[38] *Tweddle*, per Williams J referring to *Inland Revenue Commissioners v Livingston* (1927) 11 TC 538.
[39] *Newton v Pyke* (1908) 25 TLR 127.
[40] *Ferguson*, per Fisher J.

profits. Her buying and selling activities occur on an ad hoc basis when an opportunity presents itself.

66. *Hong's activity is not carried on in a business-like or systematic manner. Her approach is disorganised, lacks planning, and the transactions are undertaken irregularly and on an ad hoc basis.*

Alternative outcome

67. *If Hong started carrying on the following activities, they would indicate that Hong is conducting an activity in a more business-like and systematic manner:*

- *researching collector forums and sales platforms to understand card values and market trends*
- *regularly searching for cards to acquire for resale*
- *attending garage sales, swap meets, or other events as part of a strategy to identify profitable opportunities*
- *regularly listing cards for sale*
- *maintaining records of purchases, sales, and profits, and*
- *developing a plan for how the activity will generate profits.*

Example 8 – activity is not carried on in a business-like manner

68. *Sarah is employed as a lawyer. In her spare time, she regularly invests in shares and managed funds to build a source of passive income from dividends and, in the long term, make capital gains. Before making investment decisions, she researches investment options and considers matters such as risk, diversification, and expected returns.*

69. *After making her investments, Sarah generally holds them for the long term. She does not actively monitor daily market movements and will usually only sell investments if she requires funds for personal purposes.*

70. *Sarah's investment activities are organised and undertaken with a profit-making purpose.*[41] *However, the activity has the character of a passive investment rather than a commercial trading activity. The organised nature of her investment decisions does not, by itself, mean she is carrying on her activities in a business-like manner.*

Innovative and novel ways of carrying on a business

71. Individuals may carry on a business in new and novel ways – for example, changing existing business models to gain a competitive advantage over competitors or to fill a gap in the market.

72. In these circumstances, comparisons to other businesses in the same industry are less helpful and key considerations are whether:

- there is an identifiable system for making a profit

[41] Whether amounts derived by an individual from their investment activities are assessable income, including whether they are income from a profit-making undertaking, is outside the scope of this Ruling. See paragraph 4 of this Ruling.

- the activity has a purpose and prospect of profit and is conducted in a way that is regular and repeated, and
- the activities undertaken exhibit or have other characteristics outlined in this Ruling commonly associated with a business.

Record keeping

73. Record keeping is an important part of the organisation of a business and the keeping of records can support a conclusion that an activity is carried on in a business-like manner. These records may be kept to better understand the business. Such records would include creditor and debtor accounts, asset registers, profit and loss statements, resolutions, incorporating documents and registrations. There may also be requirements to keep records related to industry associations, state or federal legislation, professional bodies, contracts and trade agreements.

74. The orderly creation and maintenance of business records helps you to show that your activity is undertaken in a way that conforms to normal commercial practice.

75. Additionally, it is also a requirement for a person carrying on a business to maintain records that identify and explain all transactions and other acts of the business that are relevant for tax purposes.[42]

76. However, a failure to keep proper records, or those required by law, does not of itself mean your activity is not carrying on a business. Where records are not kept, greater reliance will be placed on the other indicators to determine whether your activity is carried on for the purpose of a profit including whether it is continuous and repetitive in nature.

Size and scale

77. The size and scale of the activity are relevant in determining whether those activities amount to the carrying on of a business, but they are not strictly determinative.[43] While not determinative, larger scale operations generally support the view that the activity is being carried on as a business.

78. While it may appear that you are carrying on a business if the activities undertaken are larger in scale, in some instances the activity could better be considered as an investment rather than a business.[44] Alternatively an activity at a smaller scale may still be considered a business if other indicators are clearly present.[45]

79. Smaller scale activities carried out by individuals often do not amount to carrying on a business due to being a hobby, fulfilling a domestic need or being a purely domestic arrangement.[46]

80. However, the nature of the transaction may indicate a business or profit-making undertaking, even where the activity is small and isolated. Goods acquired solely for the purpose of resale and a profit that were not for personal use can amount to carrying on of a business.[47]

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[42] See subsection 262A(1) of *the Income Tax Assessment Act 1936* (ITAA 1936). Refer also Taxation Ruling TR 96/7 *Income tax: record keeping - section 262A - general principles.*
[43] *Commissioner of Taxation (Cth) v Walker* [1985] QSC 112; *Thomas*; *Ferguson.*
[44] *Cripps and Commissioner of Taxation* [1999] AATA 937.
[45] *Thomas*, per Walsh J.
[46] *Thomas*, per Walsh J.
[47] *Rutledge v IRC* [1929] 14 TC 490.

Scale of the endeavour and use of capital

81. Capital invested in an activity can include capital contributed by way of money or assets and can include money borrowed from a third party.

82. However, the amount of capital invested in an activity is not considered in isolation of the other indicators, such as whether an activity has a commercial character or is domestic in nature or a mere investment. For example:

- If the investment of a small amount of capital is all that is required to make an activity profitable and commercially viable, for example, for a small-scale service business, the activity may still have a commercial character if supported by other indicators of carrying on of a business.
- However, the investment of a small amount of capital in a passively held investment in shares that will be held for the long-term purpose of deriving dividends and capital gains weighs against the conclusion that a business is being carried on.
- The investment of funds to acquire a single investment property held for the main purpose of deriving rental income does not support a conclusion that the rent earned is income of a business, despite the large capital investment made.[48]
- However, the investment of funds to establish a retail store, manufacturing facility or food sales outlet that sells goods to the public is consistent with the carrying on of a business.

Example 9 – large scale investment activity that is not a business

83. *Lauren owns 15 residential properties with a combined value of $12 million and annual rental income of $600,000. All properties are managed by a real estate agent who advertises for tenants, negotiates and enters leases, collects rent, arranges repairs and maintenance, and deals with tenant enquiries and complaints. Lauren's involvement is limited to approving major expenditure, reviewing periodic reports and deciding whether to retain or sell properties. Despite the scale of the investment and the substantial income generated, Lauren's activities are those of a passive investor and are not sufficient, in themselves, to constitute the carrying on of a business.*[49]

Example 10 – carrying on a small-scale business

84. *Anita makes custom engagement rings. Each ring takes several weeks to design and manufacture, and she is usually commissioned to make between 6 and 7 rings each year. Anita only makes rings to fulfil customer orders. She advertises her services through dedicated social media business pages and maintains a waiting list of prospective customers. Anita sets her prices in line with other boutique jewellers, and regularly makes a profit from her sales. Anita purchases materials specifically for each commission, maintains records of customer orders and expenses, and invoices customers for her work.*

[48] Refer TR 2019/1.

[49] Cases in which a similar conclusion was reached include *Commissioner of Taxation v McDonald, B.D.* [1987] FCA 318; *Cripps and Commissioner of Taxation* [1999] AATA 937; *Carson and Commissioner of Taxation* [2008] AATA 156. Whether amounts derived by an individual from their investment activities are assessable income, including whether they may constitute income from a profit-making undertaking or scheme, are outside the scope of this Ruling. See paragraph 4 of this Ruling.

85. *Anita's activities are small in scale. However, the limited number of sales reflects the bespoke nature of the product rather than a lack of commerciality. Her activities are carried out in a business-like manner, and she objectively intends to make a profit from the activity.*

Repetition and regularity

86. A degree of repetition or regularity is relevant when determining if your activities amount to carrying on a business.[50] This is not the same as merely being 'busy' and continuous activity is not required, depending on the nature of the activity for a business to be carried on.[51] Where there are minimum levels necessary for an activity to remain commercially viable and you fail to meet these standards then it is unlikely that your activity will amount to carrying on a business.

87. An isolated act or one-off transaction may amount to carrying on a business if it is intended to be repeated[52], or it can be shown that the transaction was the first step in the carrying on of a business.[53]

88. A profit or gain from an isolated transaction may be assessable as income where that profit was made outside the course of carrying on a business, or in the carrying out of an isolated or one-off business operation or commercial transaction.[54]

Seasonal or irregular activities

89. Some activities may still amount to the carrying on of a business even if, due to the nature of the activities themselves, the activities are irregular, undertaken for a limited time or have periods of inactivity.[55]

90. For example, the following types of activities will generally have the necessary continuity and repetition to be a business:

- seasonal activities where almost all the main income-earning activities occur during finite periods of the year, such as ski season, school holidays, or school terms
- irregular activities with stop-start characteristics, such that there are extended periods where no or limited activity is required as nothing needs to be done. For example, growing crops for which nothing needs to be done for several weeks other than regular checks or ad-hoc maintenance.

91. It is necessary for there to be a sense of a permanent character to your activity, through some continuous and repetitive basis.[56] Generally, the less frequent and regular your efforts are in relation to an activity, the less likely it is that you are carrying on a business in relation to that activity. However, you may still be undertaking an isolated transaction for profit if your activities do not amount to carrying on a business.

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[50] *Ferguson; Hope v Bathurst City Council* [1980] HCA 16; *Smith v Anderson* (1880) 15 Ch D 247 (*Smith*), per Brett LJ.
[51] *Goodman Fielder Wattie Ltd v Commissioner of Taxation* [1991] FCA 264, per Hill J (*Goodman Fielder Wattie*).
[52] *Re Griffin Ex parte Board of Trade* (1890) 60 LJQB 235.
[53] *Fairway Estates Pty Ltd v Federal Commissioner of Taxation* [1970] HCA 29.
[54] *Federal Commissioner of Taxation v Myer Emporium Ltd* [1987] HCA 18; see also TR 92/3.
[55] *Ferguson*; *Hope v Bathurst City Council* [1980] HCA 16; *Smith*.
[56] *Hope v Bathurst City Council* [1980] HCA 16.

Example 11 – regularity

92. *Huyen opens an online store to sell a single batch of goods she purchased from a supplier. Over an 8-week period, most of the stock is sold. After a period of limited activity, Huyen exhausts the remaining stock. Huyen then closes the store and does not purchase further stock.*

93. *Huyen's activities lack the continuity, repetition and regularity ordinarily associated with carrying on a business.*

Example 12 – seasonal business

94. *Billy decides to run a pop-up shop in the lead up to Christmas in his local shopping centre. He purchases stock, obtains a payment system, signage and other fittings necessary to display and sell his stock in the space he rents from the shopping centre. Billy runs the stall from mid-October to mid-January, 6 days per week, excluding the public holidays, and makes a profit.*

95. *Although Billy operates the shop only during the Christmas trading period each year, the activities undertaken during that period have the continuity, repetition and commercial character of a seasonal business.*

When does your business begin?

96. You are considered to have commenced carrying on a business when you have moved beyond preparatory stages[57] and have begun to carry on activities in a manner consistent with the carrying on of a business, having regard to the indicators set out in this Ruling.

97. Determining the time of commencement of a business activity is a question of fact[58] and must be assessed objectively having regard to the individual facts and circumstances.

98. Broadly, your business will have started when your activity has the commercial purpose evidenced from the indicators above and you have:

- made a decision to commence the business activity[59]
- acquired the minimum level of business assets to allow that business activity to be carried on, and
- have actually commenced business operations.[60]

99. The mere intention to commence a business activity is not sufficient to constitute the commencement of a business activity.[61] Where the business activities were confined to preparatory or preliminary steps, this is not commencement of a business.[62]

[57] *Ferguson.*
[58] *Goodman Fielder Wattie.*
[59] *Esso Australia Resources Ltd v Commissioner of Taxation* [1997] FCA 353, per Sundberg J.
[60] *Whitfords Beach Pty Ltd v The Commissioner of Taxation for the Commonwealth of Australia* [1983] FCA 94, per Bowen CJ, Morling and Fitzgerald JJ.
[61] *Goodman Fielder Wattie*.
[62] *Esso Australia Resources Ltd v Commissioner of Taxation* [1997] FCA 353, per Sundberg J.

Example 13 – business has not started

100. *Idhayan wants to start a coffee cart stand at the local university. He has engaged in some initial research and knows he can apply for a licence to operate on university grounds in 6 months. In the meantime, he has been testing different coffee machines, meeting with coffee roasters to sample products and obtain indicative pricing and researching profitability and operation of coffee cart businesses. He has also developed a business plan.*

101. *Idhayan is confident the business will be profitable in its first year and plans to expand the operation if it performs above expectations. He has saved sufficient capital to cover startup costs, 6 months of operating expenses and a contingency reserve. However, he hasn't yet purchased any equipment or stock because he wants to ensure he obtains the university licence before committing to the business. While Idhayan has undertaken significant preparatory activities, his activities remain preliminary in nature. He has not yet obtained the licence required to operate at the university, acquired the assets needed to commence trading, or begun offering coffee for sale.*

102. *The activities undertaken by Idhayan are preliminary steps taken in preparation for carrying on a business. As the business operations have not yet commenced, the business has not started.*

When does your business end?

103. Similarly to starting a business, when you cease carrying on a business is a question of fact and degree. You may cease to carry on a business when you no longer engage in the minimum levels of activity required to maintain the business. Mere inactivity or a temporary suspension in operations does not automatically amount to cessation of your business.[63]

104. The following indicators suggest that you have an intention to end the business activity:

- absence of trading or commercial activity
- disposal of business assets
- lack of ongoing administrative functions, including lack of record keeping
- termination of employee contracts
- cancellation of business registrations (Australian business number (ABN) and GST)
- significant periods of inactivity not explained by the inherent characteristics of that type of business[64], and
- the absence of an intention to resume trading.

105. These indicators should be considered collectively and in light of your overall conduct and objectives.

[63] *AGC (Advances) Ltd v Federal Commissioner of Taxation* (Cth) [1975] HCA 7, per Barwick CJ.
[64] Refer paragraph 90 of this Ruling.

Status: **draft only – for comment**

106. If your business is still running up until you sell it, you will cease to carry it on from the date the sale is effective and you have transferred the entirety of that business to a new owner[65], such that you no longer derive income from it.

107. The mere fact that you continue to derive income from an activity that previously amounted to carrying on a business does not mean that you are still carrying on that business. For example, you may continue to receive royalties from intellectual property that you created while carrying on a business at an earlier time. If all other business activities have ceased, these amounts are better characterised as passive income.

Date of effect

108. When the final Ruling is issued, it is proposed to apply both before and after its date of issue.

Commissioner of Taxation
16 October 2026

[65] *Coal Developments (German Creek) Pty Limited ACN 009 974 896 v Commissioner of Taxation* [2007] FCA 1324.

Status: **draft only – for comment**

Appendix 1 – Explanation

This Explanation is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Consideration of activities that amount to carrying on a business

109. It is not necessary for all of your income to be derived from the activity for it to constitute a business. The activity is considered separately from any other employment or unrelated business activities you undertake.

110. An individual may have multiple sources of income, such as working as an employee deriving salary or wages as well as undertaking separate commercial activities. Being able to determine whether you are carrying on a business is essential to meeting your tax obligations, particularly if you are new to business, or if your hobby or investment activities are growing or changing.

111. However, carrying on multiple activities does not necessarily mean that those activities, either individually or collectively, amount to carrying on a business.

Indicators of a business

112. There is no statutory test for what constitutes the carrying on of a business.

113. Several indicators have been established by case law as being relevant to determining whether activities constitute the carrying on of a business.[66]

114. Many of the indicators are closely related and have some overlap. The carrying out of an activity in a structured, systemic and organised way, with a view to profit, will often lead to a conclusion that the activity is better characterised as a business.

115. Each case turns on its particular facts. No single indicator is determinative with the conclusion depending on the 'overall impression' gained from the analysis.[67]

116. In *Martin v Federal Commissioner of Taxation* [1953] HCA 100, Webb J said:

> The test is both subjective and objective: it is made by regarding the nature and extent of the activities under review, as well as the purpose of the individual engaging in them, and, as counsel for the taxpayer put it, the determination is eventually based on the large or general impression gained.

117. Although no single indicator is determinative, the lack of commercial purpose, character and a prospect of profit, will strongly influence the overall impression gained that a business is not being carried on.[68]

Significant commercial purpose or character

118. Whether an activity has a significant commercial purpose or character is an important indicator to consider when determining whether you are carrying on a business.

119. A conclusion on the commercial purpose or character of an activity is usually drawn from the interaction with the other indicators outlined in this Ruling.

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[66] For indicators of a business, refer to paragraph 14 of this Ruling.
[67] *Martin v Federal Commissioner of Taxation* [1953] HCA 100, per Webb J; *Spriggs* at [59].
[68] *Stone*.

120. A significant commercial purpose or character is demonstrated where an activity is planned, organised and conducted in a business-like manner, with a genuine intention and reasonable prospect of generating a profit.

121. The phrase 'significant commercial purpose or character' was referred to by Walsh J in *Thomas v Federal Commissioner of Taxation* 72 ATC 4094 (*Thomas*).[69] In that case, Walsh J found that the taxpayer's activities in growing macadamia nut trees and avocado pear trees amounted to the carrying on of a business, but that his activities of growing pine trees did not.

122. Walsh J summarised the taxpayer's activities as follows:

> In my opinion the appellant's activities in growing the trees ought not to be found to have been carried on merely for recreation or as a hobby. I leave out of account the pine trees, the growing of which did not have, I think, a significant commercial purpose or character. But the appellant in planting the avocado pear trees and the macadamia nut trees set out to grow them on a scale that was much greater than was required to satisfy his own domestic needs and he expected upon reasonable grounds that their produce would have a ready market and would yield, if they became established, a financial return which would be of a significant amount, with a relatively small outlay of time and money and that this return would continue for a very long time.

123. Broadly, the intention to carry on a business and for that business to have a prospect and purpose of making a profit has been a particular focus of the Courts in determining whether activities you carry on are a business.[70]

Intention to carry on a business

124. It is necessary to consider whether you have an intention to carry on a business when engaging in your activity.

125. The nature of the intention and the extent to which the activity is undertaken determines if a business is being carried on.[71]

126. An intention to engage in business or to commence business in the future, without the commencement of activities, is insufficient.

127. Brennan J in *Inglis v Commissioner of Taxation* [1979] FCA 139 said:

> The carrying on of a business is not a matter merely of intention. It is a matter of activity. ... At the end of the day, the extent of activity determines whether the business is being carried on. That is a question of fact and degree.

128. You may carry on an activity which is preparatory in nature. Preparatory activities are undertaken to assess the viability of a business or inform your decision about whether to commence carrying on a business. However, preparatory activities on their own do not amount to carrying on a business.[72]

129. Although preparatory activities may support an intention to commence business and the existence of a commercial purpose, a business is not being carried on until the activities move beyond mere preparation and into business operation.[73]

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[69] *Thomas*.
[70] *Hope v Bathurst City Council* [1980] HCA 16.
[71] *Thomas.*
[72] *Softwood Pulp and Paper Ltd v Federal Commissioner of Taxation* 7 ATR 101.
[73] *Softwood Pulp and Paper Ltd v Federal Commissioner of Taxation* 7 ATR 101.

130. Examples of preparatory activities include:

- preliminary market research
- researching licensing and registration requirements
- testing equipment
- industry specific training
- creating initial business plans, and
- applying for loans.

131. Generally, you cannot deduct amounts for expenses incurred in relation to preparatory activities as they are not incurred in carrying on a business for the purpose of gaining or producing assessable income.[74]

132. Conversely, evidence of appropriate planning, research, commercial viability and compliance with relevant legislative and regulatory requirements will support the conclusion that you are carrying on a business. For example, such evidence includes:

- researching and forecasting the profitability of the activities
- registration of business names, licences and legal permits
- obtaining commercial insurance
- representations made to third parties that you are in business
- written contracts with clients and customers
- advertising or other undertakings to increase customer base, and
- a written business plan (which may include marketing plans, a system for carrying out a business, and cash flow forecasts).

Purpose and prospect of profit

133. If you intend to make a profit, the conclusion that you are carrying on a business may easily follow. However, the absence of such an intention does not necessarily mean that you are not carrying on a business.

134. In *Commissioner of Taxation v Stone* [2005] HCA 21[75] (*Stone*), the High Court considered the prospect of profit in determining whether amounts earned by a successful sportswoman were derived in the carrying on of a business. Kirby J stated:

> … once the view of profit became a real feature of the taxpayer's sporting endeavours it had a dual consequence. It gave a logical and factual unity to most of the receipts connected with her sport and unconnected with her employment as a police officer. Moreover, it warranted the Commissioner's conclusion that the receipts that individually might not have been regarded as "income" took on that character.

135. An intention to make a profit may be evidenced by making a consistent profit over a number of years or by having objective and consistent plans and modelling that show how you will make a profit in the future. For example, selling to the public for more than your costs indicates an intention to make a profit and selling to friends and family at or below your cost indicates a lack of intention to make a profit.

[74] Section 8-1.
[75] *Stone* at [55].

Status: **draft only – for comment**

136. An intention to make a profit can usually be evidenced by the plans you make for how you will carry out the activities, the systems by which you carry out the activities and the records you keep. Such evidence can include:

- records of market research
- customer acquisition strategies including marketing plans
- records of changing business practices to suit changing markets
- sustained growth or meeting milestones on a plan to productivity
- paying for marketing and advertising services
- opening a separate bank account for business needs
- attending industry peak body conferences
- applying for an ABN or registering for GST, and
- obtaining insurance.

What if you haven't yet made, or are never likely to make a profit?

137. While it is not essential to make a profit in a particular income year to show you are in business, the circumstances of why you have not made a profit may be determinative.

138. Not making a profit or having a small profit in any particular year is not incompatible with having a profit-making purpose. How you undertake your business activities and the likelihood of making a profit in future years are relevant.

139. In *Ferguson, Peter Ian Murdoch v The Commissioner of Taxation for the Commonwealth of Australia* [1979] FCA 51 (*Ferguson*), Mr Ferguson was intending to retire from the Navy and run a beef cattle enterprise. His plan was to run 200 head of breeding stock, although he started at a smaller scale. Initially he sub-leased a small number of heifers to begin his breeding program and entered into a management agreement for 10 years with a company to help agist, breed, inseminate, and care for his cattle.

140. Mr Ferguson received monthly breeding, calving and livestock updates from the company and had a comprehensive filing system to track mating, births, sires, dams, and the sale of offspring. Despite cattle prices being depressed and profitability being limited, a natural increase in stock over 3 years was observed and several sales were made.

141. The Court held that despite the current small scale of the operation:

> … the venture as a whole had a commercial flavour, was conducted systematically and … in a businesslike manner.

142. The necessary 'commercial flavour' was established by a number of indicators, including but not limited to:

- an objective intention to make a profit from selling bulls and heifers from a commercial beef herd
- the regularity and repetition of ongoing breeding cycles, continual agistment moves, annual calf drops and regular sales
- the systems in place for the general business record keeping and care of the cattle
- considerable evidence of organisation in the breeding itself, and

- the structure being similar to other breeding operations including in its commercial conduct.

143. While the activities Mr Ferguson had undertaken were relatively small in scale and were planned to grow over time, the way they were undertaken was considered commercial.

144. As Walsh J stated in *Thomas*, 'a man may carry on a business although he does so in a small way'.

145. In *Thomas*, Mr Thomas, a barrister by profession, acquired 7 and half acres of land, built his home on it, and planted timber, macadamia nut and avocado trees. He installed an irrigation system before deriving any income, but he expected the fruit trees to eventually derive income.

146. Due to Mr Thomas' inexperience, he did not perfectly manage his activities. Despite bushfires, poor land management, unchecked regrowth, and a lack of the standards of husbandry expected of a commercial producer, Walsh J did not see this as an impediment to the conclusion Mr Thomas was running a business. His Honour stated '[m]any persons carry on a business … without having acquired much knowledge or experience'.

147. The avocado and macadamia nut trees would produce fairly significant income as they approached maturity and there were reasonable grounds to expect saleable crops that would yield 'a financial return … for a very long time'. The Court found the activities related to those crops amounted to a business.

148. Conversely in *Hart v Commissioner of Taxation* [2003] FCAFC 105, the Full Court of the Federal Court found it unlikely anyone would run a business that incurred consistent losses for many years in a row, with limited revenue, and little prospect of future profit.

149. In this case, a trust operated a number of acrobatic and airshow aircraft for many years. While the activity had existed for an extended period of time, continuity alone was not decisive as to whether a business was carried on.[76] The previous 8 years' activity showed no discernible trading pattern, no evidence of real commerciality, nor any meaningful revenue generation in the year in question.[77] The Court stated that an objective assessment of the extent of the activity and not the state of mind or intention of the taxpayer was necessary.[78]

150. In that examination, the Full Court endorsed the position of the primary judge who said the figures 'strongly suggest an expensive pastime rather than a business'[79] and that the primary reason for that conclusion is 'simply the unlikelihood that anybody running a business would continue to incur such heavy losses for so long'.[80]

151. Intention to make a profit was further explored in *Ell v Commissioner of Taxation* [2006] FCA 71 (*Ell*), in which Mr Ell and Mr Bowman attempted to show that they were running a business of chartering yachts.

152. In the examination of the facts, Emmet J held that there was no commercial basis for the venture. His Honour noted that there was no genuine profit-making intention, and that the business plans presented showed shortfalls on both revenue and capital accounts, even with an optimistic plan for sightseeing tours that had 'no foundation'.[81]

[76] *Scottish Australian Mining Co Ltd v Federal Commissioner of Taxation* [1950] HCA 16.
[77] *Hart* at [6], per Spender J
[78] *Hart* at [6], per Spender J. See also *Inglis*.
[79] *Hart* at [18], per Spender J.
[80] *Hart* at [7], per Spender J.
[81] *Ell* at [116].

153. While a lack of profit-making is not fatal to a finding of a business being undertaken, it does colour the examination of the other indicators. In examining these indicators, Emmett J noted the taxpayers took on no independent advice on the likelihood of revenue[82], and indeed received advice that the specific sightseeing plan would lead to a shortfall in revenue.[83] The taxpayers did not formalise their arrangements with the charter operators[84], and notwithstanding the total failure to use one of the yachts in sightseeing tours, neither taxpayer revisited their plans in the absence of income from this source.[85]

154. Emmett J made further comments on how the activity lacked commerciality in how it was structured. His Honour noted that[86]:

> If there were no real expectation of a profit from engaging in a particular activity, there will be real doubt as to whether engaging in that activity can be said to be the carrying on of a business. Where the expenses and outgoings of an activity are disproportionate to any income that might reasonably have been expected from engaging in the activity that involved incurring those expenses and outgoings, it may be legitimate to draw an inference that the expenses and outgoings were not incurred in gaining or producing the relevant assessable income but were incurred for some other purpose.

Turning talent into profit

155. Your activity can have a commercial character where you decide to commercially exploit the exercise of your talent or skills, and this decision is reflected in your overt and planned activities.[87]

156. For example, you may convert a hobby or recreational activity into a commercial undertaking as reflected in the objective and organised manner in which you conduct the activity. However, you need to distinguish yourself from enthusiastic amateurs.[88]

157. What distinguishes a professional from an enthusiastic amateur is the intention of the professional to carry on as a business that which others frequently pursue merely as a hobby or by way of a pastime.

158. In *Stone*[89], the High Court considered whether the sporting activities of the taxpayer amounted to carrying on a business.

159. Ms Stone worked as a police officer and was an elite javelin thrower. She had competed in national and international javelin throwing competitions and represented Australia in javelin throwing events at the 1996 Olympics, World Cup and Goodwill Games.[90]

160. Ms Stone received prize money, grants, appearance fees and sponsorship payments for her efforts in javelin. The question before the Court was whether these amounts were derived in the course of carrying on a business and therefore assessable income.[91]

161. In considering whether Ms Stone's sporting activities constituted a business, the Court examined whether sporting activities could be commercial in nature. While the Court

[82] *Ell* at [122].
[83] *Ell* at [123].
[84] *Ell* at [124].
[85] *Ell* at [127].
[86] *Ell* at [112].
[87] *Stone*; paragraphs 13 to 16 of TR 2005/1.
[88] Paragraph 14 of TR 2005/1.
[89] *Stone*.
[90] *Stone* at [61].
[91] *Stone* at [62].

accepted that 'sport' is usually used to describe a pastime or recreational activity, it held that 'sporting activities' are not always distinct from business activities. That the fact a taxpayer is employed in an unrelated field does not preclude the activities from amounting to a business.[92]

162. The Court found that Ms Stone was carrying on a business during the relevant income year, stating[93]:

> The conclusion that the taxpayer was engaged in a business during the 1998-1999 year proceeds from an acceptance of the proposition that, showing that both before and during that year, the taxpayer was paid to endorse a company or its products as an athlete demonstrated that she had turned her athletic talent to account for money. The amounts involved were more than trivial. They were paid in return for the taxpayer undertaking obligations to promote the sponsor by wearing ASICS footwear, apparel and accessories, by displaying promotional material on the motorcar supplied by Multiplex, and by undertaking appearances for both Multiplex and DDS.

163. Similarly, in *Case C1* (1952) 3 TBRD 1*,* the Board of Review held that the taxpayer who earned a few pounds from writing short stories, radio plays, poetry and newspaper articles both as a creative outlet and to earn money was carrying on a business as a writer because she was 'in the habit of exploiting her literary talent by writing … for gain'.

164. In *Case N30* 81 ATC 163*,* the taxpayer was carrying on a business as a poet despite his failure to produce much income because his efforts were beyond vigorous pursuit of a pastime. He did everything within his control to derive a profit from his poetry.

165. In *Spriggs v Commissioner of Taxation; Riddell v Commissioner of Taxation* [2009] HCA 22, 2 professional football players objected to an assessment made by the Commissioner which denied deductions made under section 8-1 for amounts paid to their managers during the 2004–05 income year. In this case, the taxpayers received amounts for playing under employment contracts with their respective football clubs as well as other amounts from sponsorship deals with brands.

166. The parties agreed that the non-playing activities engaged in by the taxpayers constituted a business, and the question before the Court was whether the playing activities engaged in as employees of the club were part of that business. The Court considered the definition of business in section 995-1 and held that the definition does not preclude employment activities from forming part of a business, rather it provides that merely earning income under an employment contract is not enough to constitute carrying on a business.[94] That is, employment activities may form part of a business but will not constitute a business in isolation.

Organised and carried on in a business-like and systematic manner

167. When assessing whether an activity is structured and organised in a business-like and systematic manner, the focus is not merely on the presence of formal structures, but on the overall commercial character and organisation of activities.

168. An activity is more likely to be a business when it is carried on in a manner similar to that in which other participants in the same industry carry on their activities.[95]

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[92] *Stone* at [18–19].
[93] *Stone* at [63].
[94] *Spriggs* at [67].
[95] *Inland Revenue Commissioners v Livingston* (1927) 11 TC 538 at [542].

169. In *Ferguson*, the Full Federal Court emphasised that even a relatively small-scale venture may possess a commercial flavour where it is carried on in a business-like and systematic manner, rather than a haphazard or disorganised way.

170. Further, in *Newton v Pyke* (1908) 25 TLR 127, the Court indicated that a business is typically characterised by activities carried on in a systematic and organised manner, rather than on an ad hoc basis, and that such activities generally conform with ordinary commercial principles.

171. However, a lack of organisation or poor record keeping is not determinative of whether an individual is carrying on a business. While disorganisation or informality may be a negative indicator that a business is being carried on, this must be evaluated in light of the circumstances and consideration of other indicators pointing to the existence of a business.

Innovative and novel ways of carrying on a business

172. A business may be carried on in an innovative or novel manner, and the absence of a traditional or well-established business structure does not preclude a finding that a business is being carried on.

173. In *Stone*, the High Court recognised that activities which may not fit conventional industry norms can still constitute a business where they are conducted in an integrated, income-generating and commercial way.

174. Where an individual adopts a new or evolving business model, including one that departs from industry norms or leverages new opportunities, comparisons with other businesses in the same industry may be of limited assistance. Instead, the focus remains on whether the activity displays an identifiable system directed at profit-making, is carried on with repetition and regularity, and exhibits characteristics commonly associated with carrying on a business.

175. While novelty may affect how these indicators present in practice, it does not displace the need for them to be satisfied in substance.

Size and scale

176. A larger scale operation may support the view that an activity is being carried on as a business because it may indicate a commercial purpose or character. However, the size of endeavour and use of capital cannot alone form the commercial character of your activity.

177. The size or scale of the activity is not a single determinative test, and a person may carry on a business in a small way.[96]

178. Size and scale must therefore be weighed against the other indicators in considering the existence of a commercial character or purpose. When considering whether an activity amounts to carrying on a business:

- the larger the scale of the activity, the more likely it will be that you are carrying on a business, and
- the smaller the scale of the activity, the more important the other indicators become.

[96] *Thomas*.

179. In *Rutledge v IRC* (1929) 14 TC 490, the taxpayer was a money lender who had several other business interests. While travelling for an unrelated purpose, the taxpayer purchased 1 million rolls of toilet paper and later sold the entire amount in a one-off transaction, generating a large profit. The question before the Court was whether the profit was assessable income connected with the nature of trade (that is, whether it was from carrying on a business).

180. The one-off transaction was held to be in the course of carrying on a business because:

- the taxpayer's sole purpose in purchasing the toilet paper was to sell it at a profit
- the taxpayer did, in fact, make a profit
- the amount of toilet paper acquired was so large that it would not reasonably be purchased or sold for private use, and
- the activity was undertaken in the same way as an ordinary dealer or trader would undertake a business.

181. The Court reflected that although there are cases where purchase and re-sale do not amount to a business, the taxpayer only undertook this activity in the nature of trade (that is, as a business).

182. The case of *Commissioner of Taxation (Cth) v Walker* [1985] QSC 112 involved 5 Angora goats, 2 of which died. Whilst the scale was small, the Court held that a goat breeding business was being carried on because there was a profit-making purpose and repetition and regularity in the taxpayer's activities. Research, based on authenticated sources, showed that a profit could be made from the significant capital allocated to breeding stock.

183. While regularity and repetition are an important element when considering the size and scale indicator, their absence does not preclude the finding of carrying on a business where the scale of the endeavour or use of capital is significant.

Status: **draft only – for comment**

Appendix 2 – Further examples

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the proposed binding public ruling.

Case studies

184. The case studies in this Appendix outline sufficient facts to allow for a consideration of the relevant indicators of carrying on a business. These indicators are considered in combination and as a whole in forming an overall conclusion as to whether the individual is carrying on a business.

Case study 1 – starting to carry on a coaching business

Facts

185. *Natasha is a qualified fitness trainer who is employed by an academy of sport, training elite high school athletes. After noticing an increase in demand for personalised training programs, she decides to take steps to operate a coaching business focused on strength and conditioning programs.*

186. *Natasha spends several months researching the local fitness market, surveying potential clients, and investigating contemporary fitness business models.*

187. *Through this research, she identifies a gap in services for clients recovering from injuries and develops a coaching model that combines personal training with ongoing online support. She prepares financial projections, determines the number of clients she can manage and estimates how many clients she needs to become profitable.*

188. *Natasha registers her business name, applies for an ABN and obtains professional indemnity and public liability insurance. She establishes a website and social media presence to promote her services and offers structured training programs for a fee.*

189. *Natasha goes part-time at her employment as she starts to build her client base. She enters into service agreements with clients, who pay monthly subscription fees for coaching and training programs. She rents out a space at 2 local gyms during specific hours each week and purchases equipment such as resistance bands and mobility tools.*

190. *She uses a client management system that records bookings, progress notes and uses accounting software to track income and expenses.*

191. *Natasha hires an online media company who promotes her services through social media, community pages and she establishes arrangements with physiotherapists who refer their clients to her. Over time, she develops a regular client base consisting of athletes, runners and office workers dealing with chronic pain and seeking injury prevention and rehabilitation. She has scheduled training sessions throughout the week, both in person and online. She also offers after hours online sessions. Nine months after taking on her first client, Natasha quits her job at the academy of sport, as she is making enough profit from her activity and wants to spend more time on developing clients and programs.*

Conclusion

192. *Natasha's activities demonstrate she has an intention to carry on a business with a prospect of profit. They are conducted on a regular and ongoing basis, involve the provision of services to multiple clients for payment and are organised in a business-like and systematic manner, involving the investment of capital and ongoing marketing efforts. Her business commenced when she moved beyond merely planning – that is, when she began providing coaching services to clients for a fee. At that point she commenced organised, income-producing activities and was carrying on a business. It did not matter that she was still employed part-time.*

193. *When all of the relevant indicators are considered together, the overall impression is that Natasha is carrying on a business rather than merely preparing to start one.*

Case study 2 – content creation

Facts

194. *Carlos enjoys performing comedy and regularly participates in local comedy shows and amateur theatre productions. He also posts comedy videos on social media where he plays fictional characters reviewing pop culture events.*

195. *For several years, Carlos posts content irregularly and has a relatively small audience consisting mainly of friends and existing social media contacts. Although he would like to become a professional entertainer, he does not earn income from his activities and does not take active steps to commercialise them.*

196. *One of Carlos's videos reviewing a major award ceremony becomes widely popular online and attracts a significant increase in followers across multiple social media platforms. In response, Carlos begins posting content more frequently and actively engages with his growing audience.*

197. *As his audience grows, Carlos becomes eligible to receive advertising revenue, payments for the content he creates (creator fund payments) affiliate income and other platform-based revenue streams. He begins generating income from these sources.*

198. *Carlos enters into an agreement with a management company that assists him to grow and monetise his audience. The management company promotes his content, negotiates sponsorship and appearance opportunities, and helps develop new income streams in return for a share of his revenue.*

199. *To support his activities, Carlos upgrades his camera and lighting equipment and purchases costumes, props and make-up for use in his productions. He engages a tax adviser to assist with his tax affairs and record keeping.*

200. *As demand for his content increases, Carlos hires a part-time video editor and an assistant. He also rents office space where he develops, films and manages his content and related business activities.*

201. *Over time, Carlos expands his activities to include live streaming, paid appearances, product endorsements, touring live performances and television appearances.*

Conclusion

202. *Carlos's original comedy activities were a hobby. While he hoped to become a professional entertainer, his activities were undertaken primarily for personal interest and*

creative expression. He was not earning income and had not organised his activities in a commercial manner.

203. *However, the character of the activity changed when Carlos began generating income from his content and actively took steps to develop and monetise his audience. Carlos entered into commercial arrangements, invested in equipment and business infrastructure, engaged professional advisers, and hired staff. All of these active steps show that Carlos then undertook his activities in a systematic and organised manner with the intention of increasing revenue and profits.*

204. *When all the relevant indicators are considered together, the overall impression is that Carlos is carrying on a business.*

205. *Income earned from advertising revenue, creator fund payments, affiliate programs, sponsorships, appearances and similar commercial activities is generally assessable income. Carlos may also be entitled to claim deductions for expenses incurred in carrying on the business.*

Case study 3 – consistent losses

Facts

206. *Blaire enjoys leatherworking and has built a dedicated workstation in her home garage where she makes bags, wallets, purses and other leather accessories.*

207. *Blaire makes items for friends and family and charges only enough to cover the cost of materials. She enjoys learning new techniques and experimenting with different designs.*

208. *After a few years, Blaire decides to start selling her products at local markets. She hopes that she might eventually make a profit from the activity and attends markets most weekends. Over time, she develops a regular group of customers and gains a better understanding of the types of products people are interested in purchasing.*

209. *Despite these efforts, Blaire consistently prices her products below the level required to recover all of her costs, including materials, equipment, electricity, consumables and market fees. When friends and family suggest that she increase her prices, Blaire states that doing so would make the products less accessible and this would reduce the enjoyment she gains from selling them.*

210. *Over several years, Blaire continues to make losses. Although she occasionally adjusts her prices and product range, she is unwilling to make the changes necessary for the activity to become profitable. She continues attending the markets because she enjoys making leather goods, talking with customers and being part of the local craft community.*

Conclusion

211. *Some indicators in this case study support a conclusion that Blaire is carrying on a business. Blaire sells products on a regular basis, attends markets most weekends and hopes to make a profit from her activities.*

212. *However, these indicators must be considered together with all of the other circumstances.*

213. *While Blaire's activities involve regular sales, she has consistently incurred losses over a number of years and has no realistic prospect of making a profit. She continues the activity primarily because of the personal enjoyment she derives from making and selling*

her products rather than for commercial reasons. She is unwilling to make the changes necessary to operate the activity on a profitable basis.

214. *When all the relevant indicators are considered together, the overall impression is that Blaire's activity lacks a sufficient commercial character and she is not carrying on a business.*

215. *Amounts received from the activity are generally not assessable income and related expenses are generally not deductible.*[97]

[97] Where an activity constitutes carrying on of a business but produces a loss, the non-commercial loss rules in Division 35 may affect the extent to which, and circumstances in which, the loss can be deducted against other assessable income. For more information, see Taxation Ruling TR 2001/14 *Income tax: Division 35 - non-commercial business losses.*

Appendix 3 – Your comments

216. You are invited to provide comments on this draft Ruling, including the proposed date of effect. Forward your comments to the contact officer by the due date.

217. A compendium of comments is prepared as part of the finalisation of this Ruling. An edited version of the compendium (with names and identifying information removed) is published to the ATO Legal database on ato.gov.au.

218. Advise the contact officer if you do not wish for your comments to be included in the edited compendium.

Due date: 27 November 2026

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References

Previous draft:

Not previously issued as a draft

Related rulings and determinations:

TR 92/3; TR 92/4; TR 2001/14; TR 2005/1; TR 96/7; TR 97/11; TR 2019/1

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