

## Entrepreneurs warned over business and hobby definitions

By Michelle Hammond

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Entrepreneurs must ensure they distinguish a business from an income-earning hobby or risk tax evasion penalties, the Australian Tax Office has warned.

A recent court case in Australia saw a man fined more than \$10,000 after failing to declare a business operation with gross sales in excess of \$100,000.

The man, who raised and sold more than 1,200 turtles, claimed he was “enjoying a pastime” rather than operating a business.

The turtles were sold in NSW after being purchased from an internet supplier, advertised via the internet and payments were received in both cash and direct deposit to a bank account.

The man was convicted and fined, including a penalty of \$1,500, costs of \$122 and an order to pay in excess of \$9,000 in tax owed.

According to an ATO spokesperson, there is no simple answer as to whether you are in business or not because it depends upon the facts in each case, which also determine the penalties imposed.

“Penalties are subject to the individual case and individual court judgment. The taxation act outlines the maximum penalties for offences,” the spokesperson says.

“You would normally be considered to be in a business for tax purposes if you enter into an activity with the intention of running it as a profit-making business, and if the activity is carried out in a way that shows it has a significant commercial purpose and viability.”

The ATO says it is important to distinguish a business from a hobby because any money you receive from a business is assessable income, and you are entitled to an ABN.

If you are operating a business which has a turnover of over \$75,000 per annum, you must also register for GST.

The spokesperson says there are numerous ‘hobby’ roles which may constitute a business including gardeners, tradesmen and couriers.

“If you are carrying on a business, any money you earn from this activity is generally assessable for income tax,” she says.

“You are generally entitled to claim tax deductions for any allowable expenses you incur in earning this income, and if your activity results in a loss, you may be entitled to offset this loss against other income or carry it forward to offset against future income, and therefore reduce the income tax you might have to pay in the future.”

Sue Prestney, principal of MGI Business Solutions Worldwide, says good indicators of a business include the scale of the operation, whether you keep business records, and whether you advertise.

She says hobbies can also turn into businesses, so it’s important to monitor any growth in income or change in practices.

“Check with your accountant because they will be able to check a list of factors. If there’s any doubt, it’s worth talking to the tax office and asking for their view,” she says.

“However, I’m fairly sure that if you’re consistently making profits [from the operation in question], you’re in business.”

Although tax law does not provide a detailed definition of a business, the following business indicators have been used by various courts and tribunals to determine whether a business exists for tax purposes:

- Does your activity have a significant commercial purpose or character?
- Do you have more than just an intention to engage in business?
- Do you have a purpose of profit as well as a prospect of profit?
- Is there repetition and regularity to your activity?
- Is your activity of the same kind and carried on in a similar manner to businesses in your industry?
- Is your activity planned, organised and carried on in a business-like manner?
- Does your activity have characteristics of size, scale and permanency?
- Would it be true to say your activity is really better described as a business, rather than a hobby, recreation or sporting activity?