TD 92/D231 - Income tax: how do the substantiation provisions apply in relation to payments made by police officers to informants?

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This document has been finalised by TD 93/68.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: how do the substantiation provisions apply in relation to payments made by police officers to informants?

1. Cash payments made by police officers to informants are an "employment related expense" and therefore subject to the substantiation provisons of the Income Tax Assessment Act ("the ITAA"). These payments are also deemed to be an "undocumentable expense" for the purposes of subsection 82KU(8) of the ITAA. Subsection 82KU(6) sets out the type of records a taxpayer must retain if he or she wants to claim a deduction for an undocumentable expense. Unless these records are retained by a taxpayer a deduction cannot be allowed for an undocumentable expense (see *Case W124* 89 ATC 975, *AAT Case 5501* 21 ATR 3037).

2. To satisfy the requirements of subsection 82KU(6), when a police officer makes a cash payment to an informant he or she must keep a diary or similar document in which the following details are recorded:

a) The code-number by which the informant is identified or the informant's name. If a code-number is used to describe an informant, that code-number must be able to be cross-referenced to the name of the informant. We envisage that this would be done by reference to an official register of informants.
b) The amount of the payment
c) The fact that the payment was a payment for information
d) The date the payment was made.

3. In addition, each entry in the diary or similar document must:

a) State the date on which the entry was made and the name of the person making the entry
b) Be signed by the person making the entry
c) Be in the English language.

4. If a non-cash payment in the form of goods (e.g. a packet or carton of cigarettes) is made by a police officer to an informant, the substantiation provisions will require the police officer to obtain a receipt evidencing the purchase of those goods. That receipt must satisfy the requirements of subsection 82KU(1). We would also expect that a diary entry would record the date on which, and the code- number of the informant to whom, the goods were provided.

Commissioner of Taxation
10/12/92

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