TD 93/68 - Income tax: how do the substantiation provisions apply in relation to payments made by police officers to informants?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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 provisions of the *Income Tax Assessment Act 1936*. These payments are also deemed to be an 'undocumentable expense' for the purposes of subsection 82KU(8). 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 kept 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 amount of the payment; and
(b) the fact that the payment was a payment for information; and
(c) 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; and
(b) be signed by the person making the entry; and
(c) be in the English language.

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

Commissioner of Taxation
15/04/93

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