

Benefit in kind information leaflet

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Contents**Introduction.....4****Chapter 1: Scope and Introductory Concepts.....5**

1.1 What is a benefit in kind?5

1.2 To whom do these rules apply? 5

1.3 Employees5

1.4 Office 6

1.5 Position from which control is exercised...6

1.6 Persons who ceased to be officers or holders of an office 6

1.7 Presumption of benefits in kind 6

1.8 Related Company..... 6

1.9 Members of the family or household6

1.10 Obligation to declare7

1.11 Employers registration7

1.12 Interpretation of the term "remuneration".....7

1.13 Allocation of benefits in kind7

1.14 Cash benefits7

Chapter 2: Collection of Income Tax on Benefits in Kind.....7

2.1 Obligation to pay the relevant tax7

2.2 Determining the deduction of PAYE8

2.3 Record keeping8

2.4 Records to be kept for company cars.....8

Chapter 3: Types of Benefits in Kind.....8

3.1 Classification of benefits in kind8

3.2 Explanation of categories of benefits in kind.....9

Chapter 4: Determining the Value of Benefits in Kind of Category 19

4.1 Benefits in kind in relation to a car9

4.2 When does the benefit in kind arise?.....9

4.3 Use of cars within the framework of the performance of duties9

4.4 Annual value of benefits in kind9

4.5 Value of the car.....9

4.6 Value of the car use10

4.7 Value of repairs and maintenance.....10

4.8 Fuel value10

4.9 The value of the private use of the car...10

4.10 Reduction in the value of private car use (for route between two points only)10

4.11 Various Examples10

4.12 Period less than one year11

4.13 Car Replacement11

4.14 Commercial cars (van type)11

4.15 Direct payments for car use.12

4.16 Multiple cash payments to cars12

4.17 Payments based on the mileage travelled.....12

Chapter 5: Determining the Value of Benefits in kind of Category 2.....13

5.1 Category 2: Use of assets, accommodation and associated costs13

5.2 Determining the Value13

5.3 Additional costs.....13

5.3.1 Costs that permanently increase the value of the immovable property/asset.....13

5.3.2 Usual expenses incurred in the ordinary maintenance or use of the immovable property asset.....14

Unofficial translation

5.4 Insurance coverage of immovable property used for benefit in kind	14	6.6 Free or subsidized meals	17
5.5 Deductions.....	14	6.7 Gifts to Employees	17
5.6 Market Value.....	14	6.8 Tool Cost - Expense Recovery.	18
5.7 Cost of Immovable Property	14	6.9 Holiday travel, various gifts and motivation prizes	18
5.8 Granting a residence which is not a benefit in kind	14	Chapter 7: Exemptions	18
5.9 Various Examples	14	7.1 Introduction	18
5.10 Property with right to use	15	7.2 Telephone	18
Chapter 6: Determining the Value of Benefits in kind of Category 3.	15	7.3 Computer equipment.	18
6.1 Category 3: Other benefits in kind - Introduction	15	7.4 Children's care and entertainment facilities.....	18
6.2 Determining the value of the benefit in kind	15	7.5 Goods consumed inside the premises	18
6.2.1 When the asset belongs to the employer	15	7.6 Newspapers	19
6.2.2 Where the asset is not owned by the employer (external ownership).....	15	7.7 Subscriptions to professional bodies	19
6.2.3 Disposing of assets	15	7.8 Insurance coverage against damage	19
6.3 Share Purchase Schemes	16	7.9 Long Term Service Awards	19
6.4 Compensations.....	16	7.10 Christmas parties and events	19
6.4.1 Private Expenses	16	7.11 Training / Scholarships to Employees	19
6.4.2 Business trips.	16	7.12 Uniforms and Special Clothes	20
6.5 Goods and services produced by the employer and are available at a discount	17	7.13 Transfer to the workplace	20
		7.14 Recreational Areas	20
		7.15 Relocation Expenses	20

Introduction

The information contained in this informative leaflet relates to cases in which an employment relationship exists, and therefore the income that the persons earn in such cases is deemed to be the income from employment.

Unless otherwise provided by law, taxpayers receiving benefits in kind as part of their employment are generally subject to taxation. The most common benefits in kind are described below and classified as taxable or non-taxable. However, in the second group, there may be a point beyond which the term "privilege" no longer applies, i.e. the advantage gained by an employee is in fact a form of additional remuneration, so that the benefit is treated as a taxable benefit in kind.

If an amount related to a taxable benefit in kind should be included in the gross income, the employer should calculate its value or make a reasonable calculation and include it in the form TD7 in column 'Allowances and Commissions' and should withhold the applicable tax.

Chapter 1: Scope and Introductory Concepts

1.1 What is a benefit in kind?

"Benefit in kind" means the benefit granted or deemed to be granted as a result of employment or holding of an office. The basis of taxation is Article 5 (1) (b)¹ and Article 5 (2) (b) of the Income Tax Law (N.118 (I) / 2002), as amended, which applies to all incomes from employment or holding of an office, irrespective of whether are received in cash or in kind and irrespective of whether are received in accordance with the normal terms of the employment contract or as a bonus. Similarly, when a payment or any other consideration represents remuneration for services provided by a person, then is taxable not only when it is provided by the employer directly to the employee, but also when it is provided indirectly, i.e. by third parties or to third parties.

While benefits in kind have the character of a normal income, they have a number of specific features that require special treatment, with the aim:

- to ensure that there are no doubts about the taxation of benefits in kind;
- identify in which cases and to what extent the benefits are considered to be in kind;
- to determine their value, and
- determine how the income tax should be allocated.

Since benefits in kind are taxed in the same way as salaries, the employer who will bear the cost of providing them will be able to deduct that cost from its income to the **same extent** as would be deductible had the Employer paid salaries if it is in accordance with the provisions of the Income Tax Law and the relevant Circulars issued by the Tax Department. As the current legislation does not allow as deductible expenses for the employer any expenses relating to private cars, what may be allowed as tax deductible for the Employer is the cost of the benefit in kind for private vehicles as calculated in Chapter 4.

¹ Article 5 (1) Subject to the provisions of this Law, a person resident in the Republic shall, for each tax year, be liable to tax at the rate or rate defined in this Law, on the income derived from sources, and

1.2 To whom do these rules apply?

This leaflet refers to benefits in kind granted to employees or persons holding or deemed to hold an office. This fact must not lead to the conclusion that there are legal differences between employees and officers. Benefits in kind for services provided by a self-employed person are equally taxable, but the way in which they are assessed and presented is not governed by the guidelines of this leaflet.

The provision of any benefit from the employer to the employee is equally applicable to the benefits provided:

- from a company or a partnership to an officer (including persons holding a position from which they exercise control in a company and a partner of a partnership), or;
- from a company to an employee or officer of a related entity, or;
- by third parties as a reward for services provided in the context of employment or holding of an office, or;
- a family or a household member of an employee or an officer.

References to these guidelines to an employer and an employee shall be interpreted accordingly, subject to the context in which the reference is made.

1.3 Employees

Employees are persons who provide services under an employment contract, irrespective of whether it is expressly mentioned in it or implied by its content, and it is irrelevant whether the services are performed under full or part-time employment. An employee may also be considered as a person who has not concluded an employment contract but can be considered as such because of the nature of his/her duties. These guidelines also apply to benefits in kind granted to a person who has ceased to be an employee, but he/she shall continue to receive benefits from his/her previous employment.

(b) any profits or other benefits of any office or salaried services, including the estimated annual value of accommodation, food or housing, and any other allowance, whether in cash or otherwise, granted in respect of paid employment services to the person providing the salaried services or any member of his / her family;

1.4 Office

In the term "office" is given a broad interpretation and applies to:

- Company directors
- persons performing similar functions as directors, irrespective of whether they are named under a different name;
- persons to whose instructions directors normally act;
- persons holding a position in the company over which they exercise control;
- Persons (other than those mentioned above) who hold office.

1.5 Position from which control is exercised

A person is deemed to hold a position from which he/she controls the company if he/she is a shareholder or a director and:

- holds, directly or indirectly, 25% or more of the voting rights or ordinary shares of the company or related company; or
- is directly or indirectly a shareholder of the specific company and the shares he/she holds together with any shares held directly or indirectly by the member or members of his/her family constitute more than 50% of the ordinary share capital or voting rights in that company.

1.6 Persons who ceased to be officers or holders of an office

When a person who was an employee receives or continues to receive a benefit as a result of his previous employment, that benefit is taxable as a benefit in kind. The former employer shall record the specific benefit in the employer's declaration and shall issue an emoluments certificate for his/her former employee, stating any tax withheld. The same principle applies to persons that have ceased to hold an office.

1.7 Presumption of benefits in kind

The benefits in kind provided in the following cases are deemed to be provided as a result of employment or holding of an office:

- the benefits provided by employers to their employees;

- the benefits provided by companies and partnerships to their officers (as interpreted above);

- the benefits provided by the employer to a person who is not an employee of that company but is an employee/officer of a related company with that person or a person who is linked to an employee/officer of the company (employer).

Exemption from the above presumption applies only when the following result is obtained:

- the benefit in kind is purely personal offer, or
- is paid for settlement or against a debt that does not relate to employment or office; or
- is in the dividend category in accordance with the provisions of the Income Tax Law; or
- the benefit consists of withdrawals made by a partner on account of his/her share of profits and referred to as such in the partnership's records;
- the benefit falls under provisions 5 (1) (g) and 5 (2) (g) of the Income Tax Law.

If the result concludes that the benefit is remuneration for services provided as a result of employment or holding of an office, it will be treated as a benefit in kind, without the above evidence being applied, and will be subject to taxation even if provided by third parties.

1.8 Related company

A benefit granted by company A to an employee or officer of related company B is considered to be provided as a result of the employment or office, as if paid by the related company B. Two companies are related if -

- they are part of a group of companies as interpreted by Article 33 of the Income Tax Law; or
- more than 50% of the voting rights or ordinary shares are held directly or indirectly by the same persons.

1.9 Members of the family or household

If the benefit is granted to a member of the family or household of the person who is employed or holds an office, then that person shall be deemed to have been provided with the benefit. If the person providing the benefit is the employer of that person, or the company, or the partnership where that

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person holds an office, the above mentioned presumptions will be applied. An exception to this rule will apply if it is proven that the family or household member has received the benefit in his/her personal capacity.

"Family members" of a person are the spouse and persons up to and including the third degree of kindred, whether they are single or married, and their spouses and members of the same household. "Members of the same household" of a person are those persons who usually reside in the same dwelling - whether or not related to him/her.

Example:

If a car is provided to a Director of a company then the car of the company is considered as a taxable benefit in kind. If the spouse, daughter, son, mother, etc. of the Director use this car, the use of the car is also considered to be a benefit in kind. However, if the relative who enjoys the benefit in kind is not an employee or officer of the company then the use of the car by that person will be considered as a benefit in kind to the Director. The same tax treatment also applies if the car is not owned by the company but by its parent company or other related company.

1.10 Obligation to declare

Beneficiaries failing to declare benefits in kind will be liable to an additional tax for an omission as provided for in the Assessment and Collection of Tax Law (L.4 / 78). Employees who are entitled to submit a declaration have an obligation to include benefits in kind as they have already been included in the Emoluments Certificate (T.D. 63) and to the Employer's Return (T.D.7) that is submitted to the Tax Department ('TD') by the employer.

Employers who fail to declare benefits in kind in a timely and correct manner will be subject to penalties.

1.11 Employers registration

Any person providing "benefits in kind" to an employee and any company or partnership benefits to its officers, even if it has no employees, is considered an employer by the TD. Such persons, companies and partnerships

should be registered as employers in the register and receive Tax Identification number (TIN) to submit Employer's Return (T.D.7).

1.12 Interpretation of the term "remuneration"

The term "remuneration" or "earnings" appearing on this leaflet means any compensation for the provision of salaried services. It includes salaries and wages, allowances, overtime payment, leave payment, unless explicitly stated in the relevant legislation, commission, perks, bonus and tips, benefits in kind, payment of expenses and any other form of compensation.

1.13 Allocation of benefits in kind

Where the benefit in kind is shared between two or more beneficiaries, each beneficiary will receive the "share" of that benefit which will be subject to taxation and any tax due that is withheld by the person who holds it.

1.14 Cash benefits

All cash benefits paid to employees, excluding cash payments for the use of employee's private cars that use them for the purposes of the business, are fully taxable. **There are no cash benefits that are exempted from income tax.** The tax treatment of cash payments relating to the use of cars that belong to the employees for the purposes of the business is explained in the next paragraphs of this leaflet.

Chapter 2: Collection of Income Tax on Benefits in kind

2.1 Obligation to pay the relevant tax

The value of the various benefits in kind will be determined in accordance with the valuation guidelines specified in this leaflet. These valuations determine the "wage value" of the benefit in kind, which, like the gross emoluments, is taxed by filing the Employer's Return (T.D.7).

Employers must declare benefits in kind granted by the same or related companies. Disclosure of benefits in kind by third parties, e.g. tips over which the employer exercises no control are the sole responsibility of the employee.

2.2 Determining the deduction of PAYE

In accordance with the existing system, PAYE deductions are made from cash payments, i.e. salaries paid. With the addition of benefits in kind, the taxable gross earnings will include a cash part and a non-cash part. The calculation of PAYE will be applied to the total of the taxable gross earnings but will be deducted from the cash portion. For obvious reasons the PAYE tax cannot be withheld from benefits in kind.

The following steps should be followed:

- determine the value of the benefit in kind for the payment period, in accordance with these guidelines;
- add the value of the benefit in kind for that payment period to the gross earnings earned in that period;
- Calculate the PAYE that should be withheld by referring to the gross amount (benefits in kind plus gross earnings); and
- Deduct PAYE from the cash part.

2.3 Record keeping

Employers must keep appropriate records showing how the value of benefits in kind are determined and should be readily available for inspection when requested by the Commissioner of Taxation.

It should be noted that benefits in kind may be on a continuous basis, as in the case of a company car, residence, loan, etc., or it may be a lump sum, such as asset allocation, airline tickets, discounts, etc.

Employers are required to make this distinction so that they can keep records that can justify the tax treatment of benefits in kind. For example, the value of the car or boat would not change during the year, unless the relevant assets change during the year. It is therefore expected that records will be kept showing how a continuous benefit in kind has been determined at the initial stage and which evaluation criteria have been used, and how the one-off benefits in kind have been identified and assessed, including the documents used to do so.

It would be preferable for employers to consult the local District Tax Offices of the

Tax Department regarding the records to be kept.

2.4 Records to be kept for company cars

Employers are required to keep special records for all private motor vehicles, as well as cars that are rented or leased on a long-term basis, regardless of whether they are available for benefits in kind to their employees. This record must be kept up-to-date and available to the Commissioner of Taxation upon request.

It should include the following:

- description of each vehicle: registration number, manufacturer, model;
- the time of first registration in the Republic;
- in the case of a used car (transported from abroad), the time of its first registration outside the Republic;
- the value of the car, when it is new, including taxes and licenses, plus any discounts that have been received. All documents and invoices are required. In the case of a second-hand, the Commissioner may make his/her own assessment;
- name of the beneficiary, indicating whether he/she performs the functions of the seller/distributor;
- address and description of the place where the car is kept;
- whether the car belongs to the employer or is being leased or hired.

Chapter 3: Types of Benefits in kind

3.1 Classification of benefits in kind

Benefits in kind are divided into three categories:

- Benefits in kind in relation to cars.
- Use of assets including accommodation.
- Other benefits in kind.

The employer must identify and pay the corresponding tax on the value of the benefits in kind of these categories. However, there is no obligation to tax these benefits separately under these categories, as these cannot be separated and declared separately in the Employer's Return (T.D.7).

3.2 Explanation of categories of benefits in kind

(a) Benefits in kind in relation to cars.

These benefits include:

- cars owned and/or leased on a long-term basis and/or leased by the Company and made available to its employees or officers for private use;
- and lump sums paid to employees or officers in respect of the use of their own cars in the course of carrying their duties.

(b) Use of business assets, including accommodation.

This category refers to the use of assets owned by the enterprise or leased or hired on a long-term basis by the enterprise and made available to employees or officers for their private use. This category **excludes** the use of cars included in Category 1 but concerns the private use of accommodation, boats, airplanes, furniture, machinery, etc.

(c) Other benefits in kind.

These are various other benefits in kind that do not fall into the above categories. Such benefits include, inter alia, transfers of assets at subsidized prices, compensation of various utility bills, schools, etc., and the supply of goods and/or services free of charge or at reduced prices, such as entertainment, meals, travel, etc.

Chapter 4: Determining the Value of Benefits in Kind of Category 1

4.1 Benefits in kind in relation to a car

Benefits in kind related to the use of cars can be of three types:

- the use of cars;
- the use of commercial cars (van type); and
- cash compensation for a car.

4.2 When does the benefit in kind arise?

The benefit in kind arises when there is usually the element of private use, which is presumed to exist:

- when the car is made available to a specific person; or
- when it is available for use outside normal working hours; or

- when it is not stored at the premises of the employer (or company or partnership) during the night or weekends; or
- when it is used frequently for private purposes.

4.3 Use of cars within the framework of the performance of duties

Persons who are employed as drivers and/or messengers/distributors and other persons who in the performance of their duties are obliged to use cars belonging to their employer and/or leased on a long-term basis and/or rented by their employer, but the use of the car outside the normal working hours is not allowed, are not considered to enjoy any benefits in kind, regardless of whether they have the possibility to park the car near their private residence.

This provision does not apply to any other employee who is not employed as a driver and/or messenger/distributor and is not required to use cars owned or leased by his employer in the performance of his/her duties. For the purposes of calculating the value of benefits in kind, the same criteria will apply to all cars, irrespective of whether are owned or rented or leased by the employer.

4.4 Annual value of benefits in kind

The annual value of the benefit in kind relating to cars depends on -

- the value of the car;
- the value of car use;
- the value of the repairs and maintenance;
- the value of the fuel, and
- the value of the private use of the car.

4.5 Value of the car

The value of the car is calculated as follows:

- In the case of new owned cars, the value is equal to the actual costs shown on the invoice (including V.A.T., customs duty, registration fee, plus any other taxes and delivery charges). When personal discounts are received, other than discounts available to the general public, such as "trade fair discounts" or other "special discount offers", the value of these discounts **must be added back** to the amount shown on the invoice. The actual cost of supply of any optional equipment incorporated into the car should also be added to the invoice amount,

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regardless of whether it is done before or after the delivery. The value of the optional accessories must include all taxes, as well as delivery and installation costs.

- In the case of second-hand and owned cars purchased before 1/1/2018, for which the real cost as a new car cannot be determined with relative ease, the value is determined according to a decision of the Commissioner of Taxation, taking into account all relevant information.

Any increase in the value of the car as a result of the addition of additional equipment will lead to a new "value of the car" and will therefore affect the calculation of the value of the relevant benefit in kind. In such cases, the value of the "benefit in kind in relation to the car" will apply from the date of installation of the new equipment.

4.6 Value of the car use

The values of the car use are 17% of the value of the car.

For cars older than six (6) years from the year of manufacture, the value of the car use is 8%.

If the company rents a car under a leasing agreement, then the value of the car use is equal to the annual financing cost (finance lease expense).

4.7 Value of repairs and maintenance

This value represents the cost of car insurance, maintenance, road tax etc. and is calculated as a percentage of the value of the car as follows:

- if the value of the car is equal to or less than €28.000, then it is 3% of the value of the car;
- if the value of the car is more than €28.000 then it is 4% of the value of the car.

4.8 Fuel Value

This value represents the cost of the fuel when it is paid by the employer and is calculated as a percentage of the value of the car as follows:

- if the value of the car is equal to or less than €28.000, then it is 3% of the value of the car;
- if the value of the car is more than €28.000, then it is 5% of the value of the car.

However, if the fuel is paid separately (a lump sum is paid), the benefit in kind for the car is calculated without the fuel benefit and the

financial compensation is fully taxable without any deduction.

The "fuel value" is taken into account only when the employer pays for the fuel.

4.9 The value of the private use of the car

This value is determined as part of the total (a) value of the use of the car, (b) the value of the repairs and maintenance, and (c) the value of the fuel. This part is determined as a percentage based on the value of the car when it is new according to the table below:

Car Value (€)		Value of the private use of the car	
From	Until		Of the total:
0	18.000	30%	(1) value of the car use;
18.001	22.000	40%	(2) value of repairs and maintenance;
22.001	32.000	50%	and
32.001	50.000	55%	(3) value of the fuels
Over	50.000	60%	

4.10 Reduction in the value of private car use (for route between two points only)

The value of the private use of the car is reduced to 20% when the car is used either exclusively or mainly for a route between two points.

A route between two points is considered to exist when the relevant car is primarily used for business purposes, for example when the employee is required to deliver goods or provide services or provide transportation to customers or other employees.

If the above applies, then the employer must submit the appropriate form to the Commissioner of Taxation to reduce the value of the private use to 20%.

4.11 Various Examples

Example 1:

The car was bought in 2012 - Car value €18.000
- The cost of fuel is paid by the employer.

Step 1	Calculate the value of the use of car = 17% of the car's value. = $17\% \times 18.000 = 3.060$	Step 2	Add the value of repairs and maintenance = 3% of the value of the car. = $3\% \times 18.000 = 540$
Step 3	Add fuel value = 3% of the	Step 4	Calculate the value of the

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	value of the car. = 3% x 18.000 = 540		private use. Determine percentage (%) from the Table, i.e. 30%. = 30% x (3.060 + 540 + 540) = 1.242
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In this example, the employee's gross earnings are increased by €1.242, i.e. €103,50 per month, before the PAYE is withheld.

Example 2

The car was bought in 2014 - Car value €30.000
- The cost of the fuel is paid by the employer.

Step 1	Calculate the value of the use of car, 17% of the car's value = 17% x 30.000 = 5.100	Step 2	Add the value of repairs and maintenance = 4% of the value of the car (the car exceeds 28.000) = 4% x 30.000 = 1.200
Step 3	Add the value of the fuel, 5% of the value of the car (the value of the car exceeds 28.000) = 5% x 30.000 = 1.500	Step 4	Calculate the value of the private use of the car. Determine percentage (%) from the Table, in this case 50% = 50% x (5.100 + 1.200 + 1.500) = 3.900.

In this example, the employee's gross earnings are increased by €3.900, i.e. by €325 per month before the PAYE is withheld.

Example 3:

The car was bought in 2008 - Car value € 20.000
- The cost of the fuel is paid by the employer.

Step 1	Calculate the value of the use of car, 8% of the car's value, because the car is older than 6 years. = 8% x 20.000 = 1.600	Step 2	Add the value of repairs and maintenance, 3% of the value of the car = 3% x 20.000 = 600
Step 3	Add the value of the fuel, 3% of the value of the car = 3% x 20.000 = 600	Step 4	Calculate the value of private use of the car. Determine the percentage (%) from the Table, in this case 40% = 40% x (1.600

			+ 600 + 600) = 1.120
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In this example, the employee's gross earnings are increased by €1.120, i.e. by €93,33 per month before the PAYE is withheld.

4.12 Period less than one year

If the benefit in kind for the use of the car is available for less than one year (e.g. a new employment, a retirement or any other reason, due to termination, etc.), then the benefit in kind will be reduced and the value of the benefit will be calculated on the basis of the actual time (months) of the use of the car. The use of a company's car by a worker for more than 15 calendar days will be taken as a complete month.

4.13 Car Replacement

If the vehicle is replaced by another type of car during the year, unless the replacement is temporary, e.g. when the car to be repaired is replaced, the initial estimate of the value is considered part of the cost and a revaluation based on the value of the new car should be made. The new value starts from the date of use of the new car.

No deduction is made from the value of the benefit in kind if the vehicle is not available for a period less than 30 days. If the replacement vehicle is available, the initial assessment will continue to apply. When the vehicle is not available for a period of at least 30 days, a proportionate (pro-rata) deduction should be made from the value of the benefit in kind.

4.14 Commercial cars (van type)

If a commercial car is available to an employee due to his/her employment and is available for his/her own use, a taxable benefit in kind arises. A commercial car for the purpose of this benefit is a car primarily manufactured for the carriage of goods or other cargo (but not passengers) of a design weight not exceeding 3.500 kgs.

The value of the annual benefit in kind for commercial cars is defined as a one-off amount of €500 per year, regardless of the type, model or year of manufacture/registration of the relevant commercial car.

4.15 Direct payments for car use

If cash is paid to the employee as a "car compensation", for the use of a personal car for business purposes, such compensation shall be deemed to include a portion of a benefit in kind, to which income tax is payable. The value of the benefit in kind is calculated as follows:

- If the annual compensation is € 3.000 or less, then it is 50% of the compensation.
- If the annual compensation exceeds €3.000, then it is the annual compensation minus €1.500.

Any compensation (including compensation in the form of voucher/credit card etc.) in relation to the cost of fuel paid to an employee who already receives a cash compensation for the car shall be added to it and 50% or €1.500 (maximum) shall be deducted from that amount.

The deduction of €1.500 or 50% as set out above applies only when:

- the compensation is stated in the collective agreement or the employee's employment contract; and
- the employee is not a director, partner or other person holding a position from which he/she exercises control over the company or partnership;
- the employee uses his/her personal car;
- the employee does not have any benefit from the use of another vehicle belonging to his/her employer.

If any of the above conditions are not met, then the total amount of the compensation is taxable.

If there is a benefit in kind in relation to a car (owned by the employer) and the employer compensates the employee the actual fuel costs incurred, for the purposes of calculating the benefit in kind, the fuel is considered to be paid by the employer and the relevant 3% or 5% of the fuel benefit will be applied.

When the employee uses the car belonging to his employer, which leads to a benefit in kind and the employee pays for the purchase of the car in instalments, then the car will be considered as belonging to the employer until

the transfer is made. Until this happens, the value of the benefit in kind each year will be calculated on the total price of the car.

It should be clarified that when transferring the car to the employee, any benefit in kind that may arise must first be calculated. The calculation of this benefit is as follows:

Purchase price of the car - (Total amount of benefit in kind added to the employee's salary from the use of the car + Total amount of instalments paid by the employee + Selling price) = Value of benefit in kind.

4.16 Multiple cash payments to cars

If a beneficiary receives multiple cash compensations in respect of a car either by the same employer or other associated employers or by other different employers, the deduction of 50% up to a maximum of €1.500 can be used only once, i.e. on a single cash compensation only. **It is an obligation of the employee to inform his/her employer that he/she has already benefited from the deduction relating to cash compensation for a car and that no further deductions should be allowed.**

Example:

One beneficiary receives two cash compensations of €300 per month. On the cash compensation of the 1st car, the taxable benefit in kind will be €3.600 minus €1.500 = €2.100. On the cash compensation for the 2nd car, the taxable benefit in kind will be €3.600 minus 0 = €3.600. In all other cases, any cash payments are fully taxable according to the usual PAYE rules.

4.17 Payments based on the mileage travelled

If the compensation is granted to the employee who uses his/her private vehicle in the business on the basis of the distance covered, i.e. the costs are covered at an agreed price per kilometer, these repayments do not constitute a benefit in kind, provided that:

- the rate of repayment for each kilometer driven is not more than 25 cents per kilometer (appropriate amendments will be made in accordance with the Travel Expenses Circular issued by the Department of Public Administration and Human Resources);
- payments include only the business component of use;

- the entire journey to be compensated will be recorded in a log book available for later verification by the Tax Department, and
- the log book is kept by the employer for at least six years.

If any of the above conditions are not met, then the total amount will be considered as consideration for a car and will be subject to the same valuation criteria (see section 4.15).

Chapter 5: Determining the Value of Benefits in kind of Category 2

5.1 Category 2: Use of assets, accommodation and associated costs

This chapter refers to the provision of assets to the employee when they belong to the employer and/or are leased and/or rented by the employer. These items include accommodation, furniture, boats, aircraft, machinery, etc. Any costs directly linked to such concession are considered to be part of the value of the benefit in kind.

The provision of computers, other related equipment and internet connection services are expressly exempted and not included in benefits in kind.

It is clarified that the above does not apply to private vessels and aircraft for which VAT and income tax amounts have been fixed in advance by the Tax Department, as well as to dwellings owned by legal persons who are not engaged in economic activities.

5.2 Determining the Value

The annual value of the above-mentioned benefits in kind (category 2) is determined as follows:

- In the case of immovable property belonging to the person providing the benefit in kind, the value of this benefit is 4% of the highest price between the market value and the initial cost. The 4% rate applies not only to immovable property related to accommodation, but also to other types of immovable properties such as garages, offices, warehouses, stadiums, etc.
- If the owner leases the immovable property to an employee or director, then a benefit in kind arises if the agreed rent is **less than** 4% of the market value or the initial cost of the

property in question, whichever is higher. The benefit in kind is the amount of the result minus the agreed rent.

As in other cases, the data must be kept by the employer regardless of any payments/compensations made by the employee.

- In the case where the property/accommodation is rented from an **unrelated third party**, the value of the benefit in kind is the actual rent paid by the employer.
- For benefits in kind in this category arising from the use of assets other than immovable property, the value of the benefit in kind shall be equal to 15% of the market value or initial cost, whichever is the higher. After ownership of six (6) years, the initial cost for determining the value of the benefit in kind will be reduced by 40%.

In the case of immovable property, the benefit in kind is deemed to be provided on the date of the first establishment by the beneficiary, whereas in the case of movable assets the benefit in kind is deemed to be provided when it is made available to the beneficiary for the first time. In any case, the benefit in kind is still valid, as long as the asset is at the disposal of the beneficiary.

5.3 Additional costs

5.3.1 Costs that permanently increase the value of the immovable property/asset

Any costs borne by the employer, which permanently increase the value of the immovable property or asset in question, such as improvements and additions, will lead to an increase of the initial cost as well as the market value. Such an example would be the extension of an existing building or to convert or reconstruct an existing old building or when a vessel's equipment is upgraded with additional jetties, engines or other equipment. In such cases, a new valuation of the related immovable property/asset should be made by a professional valuer and the value of the benefit in kind to be recalculated accordingly.

5.3.2 Usual expenses incurred in the ordinary maintenance or use of the immovable property/asset

When the employer pays any expense associated with the normal use of the asset, but which does not increase its value on a permanent basis, e.g. water, electricity, domestic services, redecorations, damage repairs of any kind, management fees, security etc, this is also considered as a benefit in kind. Such an expense is wholly taxable at the time it is incurred, and the relevant cost has to be added to the value of the benefit in kind for that year.

5.4 Insurance coverage of immovable property used for benefit in kind

If the employer or a company pays the expenditure for insurance coverage that is used as a guaranty for mortgages to cover its liabilities, then it will not be considered as an additional cost when the same property is used for the benefit in kind and this is not added to the calculation of benefit in kind.

5.5 Deductions

The value of the benefit in kind shall be reduced by any amount paid by the employee for rent in the form of repayment of the bills or other expenses related to the use of the asset, to the extent that the value of such repayments has been taken into account when calculating the value of the benefit in kind.

5.6 Market Value

The market value is calculated based on the price that the asset would obtain on the market during the first available year. In the case of immovable property, the value is determined as the estimated value of the Land and Surveys Department (L.S.D) as at 1.1.2013 or any other later assessment of the L.S.D.

5.7 Cost of Immovable Property

The initial cost of immovable property belonging to the employer is the price paid or payable for the acquisition of the property, subject to the special rules applicable to property held as a right in rem.

5.8 Granting a residence which is not a benefit in kind

Residence in immovable property is not a benefit in kind if:

- the property in question is deemed to be the official residence available from a public authority or a public institution in public office; or
- accommodation is available temporarily as part of specific security measures; or
- the employee is bound by the employment contract to reside in that space provided by the employer for the purpose of performing his/her duties better, and it is customary for employers to provide such accommodation in respect of similar tasks; this rule does not apply to accommodation provided to a director/officer of the company or partnership.

5.9 Various Examples

Example 1

An employer grants for use "owned" property to an employee for the tax year 2017. According to the estimated value of the L.S.D. on January 1, 2013, which estimates its market value at €200.000. Additionally, the employer must pay €6.000 for the payment of various bills, while the employee pays for these bills the amount of €2.000.

Step 1	Calculate the annual value of the benefit of 4% of the market value = 4% x 200.000 = 8.000	Step 2	Add the expense made by the employer = 8.000 + (6.000 - 2.000) = 12.000
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In this example, the employee's gross earnings will be "increased" by €12.000, or €1.000 per month, before deducting PAYE.

Example 2

An employer rents a property for €1.300 per month for his/her Director. In addition, the employer pays various bills worth €4.200. The Director does not pay any amount in respect of this property.

Step 1	Calculate the annual rental value = 1.300 x 12 = 15.600	Step 2	Add the expense made by the employer = 15.600 + 4.200 = 19.800
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In this example, the Director's annual earnings are increased by €19.800, or €1.650 per month, before deducting PAYE.

Example 3

An employer makes available for use the boat belonging to the company, to one of its directors and his/her family. The boat was purchased in 2000 for €120.000. In addition, the employer also pays €6.000 for the maintenance and preservation of the boat, while the director pays €2.000 to cover the cost of the fuel.

The boat is valued on 1 January 2017 by a boat valuer at € 80.000.

Step 1	Calculate the annual value of the benefit. Since ownership of the boat has been for the employer for more than 6 years, the original cost is reduced by 40%, which is equal to $€120.000 \times 60\% = €72.000$. 15% of the more than 72.000 and 80.000 = $15\% \times 80.000 = 12.000$	Step 2	Add the expense made by the employer = $12.000 + 6.000 = 18.000$
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Note that the amount of €2.000 paid by the Director for fuel is a private expense made by him/her for which he/she is not compensated by the employer and will not be presented in the calculation of the value of the benefit in kind.

In this example, the Director's gross earnings are "increased" by €18.000, or €1.500 per month, before the PAYE deduction.

5.10 Property with right to use

If the employer holds an asset via a lease agreement, the value of the benefit in kind is determined in the same way as for its own assets and the annual value of the benefit in kind would be 4% of the market value or the initial cost, whichever is the higher. In this case, the market value is the market value of the full ownership (free possession).

Chapter 6: Determining the Value of benefits in kind of Category 3.

6.1 Category 3: Other benefits in kind - Introduction

All other benefits in kind which are not in categories 1 and 2 falls into this category, e.g. disposal of assets at subsidized prices, repayment of personal bills (utility bills, tuition fees, etc.) and free supply of goods or sales of goods and services with discounts such as travel, entertainment, meals, domestic services, professional advice, transport etc.

6.2 Determining the value of the benefit in kind

The determination of the value of the benefit in kind of Category 3 which consists of a supply of goods or a service is defined as follows:

6.2.1 When the asset belongs to the employer

Assets belonging to the employer consist of goods or services that are manufactured or processed or otherwise exploited by the employer as part of the business carried on by itself or any related company as part of the activities of that company. In such cases the value of the benefit in kind is defined as the difference between the normal selling price of the good or service (less discounts available to the general public) and the price (if any) in which the good or service is available to the employee.

6.2.2 When the asset is not owned by the employer (external ownership)

The external benefit in kind of this case consists of a benefit in kind which does not fall under paragraph 6.2.1. In such cases, the value of the benefit in kind shall be equal to the employer's cost or the market value of the relevant good or service, whichever is the higher, minus the price at which the good or service was made available to the employee.

6.2.3 Disposing of assets

When the benefit in kind consists of a transfer of ownership of an asset, both tangible and intangible (which would normally be a standalone transaction), the value of that benefit would be:

- the normal selling price of the asset minus the price at which the asset was transferred to the employee in the case of "employer's ownership"; or

- the higher value between the initial cost of the employer and the market value of the asset concerned less the price at which the asset is transferred to the employee in the case of "external ownership".

In any case, all costs associated with the transfer must be added to the value of the benefit in kind.

In the case of the transfer of an "external" movable asset other than that specified in 6.2.1. that is older than six (6) years (from the date of acquisition by the employer), **the costs of the employer** will be reduced, for purposes of determining the value, to the 60% of the original costs.

6.3 Share Purchase Schemes

The right to purchase shares in a company forms a benefit in kind. Under such schemes, the employees of the company usually have the option to purchase or to apply for purchase of shares in the company or another related company at a specified price. This option is valid for a specified period of time and the employee may exercise this right at any time if the value of the shares is likely to increase.

When the right to purchase shares is considered to be a benefit in kind from the company to the employee and its calculation is referred in Circular 2009/11 dated 17/11/2009.

6.4 Compensations

6.4.1 Private expenses

When the employee's private costs are paid by the employer, then the employer is deemed to provide a benefit in kind. The employer may cover such private expenses either by paying directly for them or by compensating the employee for the total cost or part thereof.

Private costs include utility bills such as water, electricity, school tuition fees, private education, scholarships, meals, entertainment, travel, etc. In a limited number of cases this benefit is exempted (see Chapter 7: Exemptions); otherwise, this benefit is a taxable benefit in kind. The value of the benefit in kind is the amount actually paid by the employer or the amount to which the

employee is compensated plus any other costs directly borne by the employer.

Reimbursements received by an employee in respect of costs which has paid in the sole interest of the employer shall not be regarded as benefits in kind if supported by evidence issued in the name of the employer. Such costs may or may not be claimed as tax deductible by the employer in accordance with the relevant rules of the Income Tax Law.

6.4.2 Business trips

The total cost of business trips is not a benefit in kind. This includes the cost of tickets, accommodation, meals and other costs deemed necessary for participating in the relevant business trip. Business trips include trips undertaken for marketing purposes, business transactions, participation in business seminars, temporary placement of an employee outside the Republic and other similar purposes. Participation in educational programs abroad is exempted, subject to the conditions for the exemptions to the programs and scholarships as referred below (see Chapter 7: Exemptions). When the private part of the trip is very small and casual it will be ignored. However, when the private part is quite important, such as when the employee is accompanied by family members or his period of stay is quite long in relation to the business purpose of the trip, it will not be considered as a business trip and the total cost will be considered as personal cost.

It is noted that a lump sum, which covers normal travel costs of up to €250 per day, is not considered a taxable benefit. However, if the actual cost is borne by the employer and an additional amount per day is granted (per diem), then this is a taxable benefit.

It is clarified that it is not a benefit in kind and any cost may arise for business travel within the Republic to another city if deemed necessary.

6.5 Goods and services produced by the employer and available at a discount

As explained above, benefits in kind arise where goods and/or services provided by the employer as part of its business activities or another affiliate as part of its business operations are provided to the employee at a reduced price or for free. The first €500 of these services per calendar year are exempt from the tax as benefit in kind, if:

- the beneficiary is not a Director or a person holding a position from which he/she can exercise control, and
- the employer applies a plan that entitles employees to free or discounted goods or services produced directly by the employer.

In the case of goods made available at a discount, the value of the benefit in kind shall be equal to the difference between the selling price of the good or service and the actual price paid by the employee to the employer. "Selling price" means the normal selling price available to the general public, including any discounts granted in general to the public.

If the benefit in kind consists of the free of charge provision of air tickets (by the employer) in the course of its business activities, when operating in the aviation industry, the value of the benefit in kind is the higher of:

- the actual costs borne by the employer to provide the benefit in kind; and
- 20% of the market value of the relevant ticket of economy class.

6.6 Free or subsidized meals

The supply of free or subsidized meals is considered as a taxable benefit in kind but is exempted when:

- (a) subsidized meals are provided to all staff in the business building only, or
- (b) provision is made within the framework of an organized event.

The value of the benefits in kind should include the costs of food, preparation and service, i.e. the actual costs of the employer. It should also be applied to actual facts, i.e. taking into account the number of employees, the number of days scheduled for meals, etc.

The above treatment applies irrespective of the provisions that may be included in the different employment contracts.

6.7 Gifts to employees

A gift (either in cash or in kind) from the employer to the employee is a benefit he/she earns during or due to the person's employment. If the Christmas gift value or a similar gift does not exceed the amount of €300 and when the employer does not claim its cost as an expense when calculating its taxable income, then the gift does not need to be declared as an employee's income. This practice will only apply to one gift per employee during the year, unless the employee is getting married, which in that case it will apply to two gifts.

If the employee is paid by the employer in kind or other non-monetary items, then the market value of the remuneration should be included in the employee's income. If the item is entitled by the existence of the company logo or is disguised as the employee's name or message, its market value may be adversely affected. In such cases, the amount to be included in the employee's income may be reduced (with a reasonable amount), taking into account all circumstances. Depending on the value of the prize, the existence of a logo may have little, (of course, no effect) on the market value of the good. If the prize is a board, trophy or other commemorative denomination for which there is no market value, then there is no need to include any amount in the employee's income.

If an employee receives a prize from his/her employer in respect to his/her performance, e.g. sales value or other work he has performed, the market value of such an incentive shall be considered as a consideration which is included in his/her income unless the employer does not claim the costs.

6.8 Tool Cost - Expense Recovery

If the employer compensates the employees (by cash) to cover the cost of the tools (not including consumables) that the employees must possess in order carry out their work, the amount should be included in the employees' incomes. It goes without saying that these tools will be owned by the employee rather than the employer.

6.9 Holiday travel, various gifts and motivation prizes

If the employer pays for employee's vacation, his/her family or both, the cost of the employer is a taxable benefit in kind. Similarly, when a cottage property belonging to the employer is used by the employee, the spouse or both, there is a taxable benefit in kind, the value of which is equal to the market value of the accommodation minus any amount paid by the employee to the employer.

However, the taxable benefit in kind may be disregarded if there is conclusive evidence that the employee was engaged in the business activities of his employer during the holiday.

If the presence of the employee is deemed necessary for the purposes of the operation and this function is the main purpose of the journey, then no taxable benefit in kind will be recognized with the travel expenses of the employee deemed necessary for the achievement of his/her business purposes, if the costs are considered reasonable in relation to the business operation. When a business trip is extended to cover holiday or leisure payments, the employee shall be deemed to receive a taxable benefit in kind, the value of which shall be equal to the cost borne by the employer in respect of such extension.

Chapter 7: Exemptions

7.1 Introduction

As mentioned previously, there are several cases where a benefit in kind received by the employee will not be taxed at all or will not be taxed entirely as a benefit in kind. Additionally, from the above-mentioned cases, the rules will provide exemptions for the following:

Particular emphasis should be placed on the fact that the exemptions contained in this

leaflet are not applicable where the benefits in kind take the form of cash compensations. Exemptions apply only when payment or compensation to the employee is made in respect of actual costs supported by proof of payment. Any evidence to be compensated should be retained by the employer for an inspection carried out by the Tax Department at a later stage.

7.2 Telephone

Payments or reimbursements for fixed or mobile phones are exempted from the provisions of these guidelines and are not taxed on the part of the beneficiary.

Payments or reimbursements made to employees in connection with the provision of telephone services are exempted only when they are supported by actual receipts. The lump sum of any cash for telephone services is taxed on the entire amount.

7.3 Computer equipment

The use of computers and other related equipment, including the provision of on-line services provided by the employer, is exempted from the provisions of these guidelines and is not a taxable benefit in kind for the beneficiary. The provision of free internet and other free subscriptions is considered to be taxed as a benefit when the employer is the provider.

7.4 Children's care and entertainment facilities

Services relating to the care and entertainment of children provided at the premises of the employer for the benefit of employees are exempted from taxation. In addition, the facilitation provided at the premises of related companies is exempt.

7.5 Goods consumed inside the premises

Goods which are available to employees for consumption during the working day at the premises of the employer are exempted. This would be the case where a brewery supplies its employees with beer for consumption within its premises during a working day. When the employer is a company, the exemption also extends to goods consumed at the premises of a related company.

7.6 Newspapers

Newspapers and/or magazines or subscriptions to newspapers or magazines related to the nature of the business activities which are available to employees for use for the purposes of the business are exempted. This also applies when similar items are available electronically, such as subscriptions to websites. However, this exemption is not applicable when there is no business use or where business use is occasional.

7.7 Subscriptions to professional bodies

Subscriptions paid by an employer for the membership of an employee in a professional body are exempt from tax, provided that the membership is considered necessary for the performance of the employee's work and the employer is the person that basically is benefiting from the payment.

Whether the employer is the person who basically benefits is a matter of the actual facts. If the membership is not a requirement for employment, the subject of the person receiving the benefit must be resolved. The employer is responsible for this finding but should be able to justify its decision upon the request of the Tax Department.

7.8 Insurance coverage against damage

The insurance or compensation paid by the employer for the purpose of covering the personal liability of officers arising from the performance of the duties of officers is exempted from tax.

7.9 Long Term Service Awards

Prizes awarded as recognition for service of fifteen (15) years and above are exempted, provided that the taxable value of the prize does not exceed the maximum value (€100 per year of service) and no such prize has been given to the recipient the previous ten (10) years. Any value beyond the above-mentioned amount will be taxable income for the recipient.

7.10 Christmas parties and events

An annual Christmas party or an alternative event of a similar nature, such as an annual

party with lunch, which is for all staff in general, is not considered to be a taxable benefit in kind.

The organization of a party or other social event by the employer, which is generally available to all employees, will be accepted as a non-taxable benefit in kind if the cost per employee is reasonable under the circumstances.

7.11 Training/Scholarships to Employees

Expenses incurred by an employee or for whom he/she is compensated for participating in an education or training program are exempt from taxation when the following conditions are met:

- The training program will lead to the acquisition of the knowledge or skills required: (a) to perform its duties; or (b) it will be directly related to the increase in efficiency in the performance of the current duties or duties without the need to lead to the acquisition of any qualification by the employee.
- These costs consist of (a) tuition fees for the program, (b) the cost of the necessary books and other materials for the program;
- If the employee is temporarily out of his usual workplace while participating in the program, the related costs may include (a) additional costs for the movement to and from the location of the program; and (b) maintenance costs within reasonable limits while participating in the program. If the program takes place outside of the Republic, the related costs also include the cost of travel and accommodation.

Taxable benefit in kind is incurred if the main purpose of the training is for the benefit of the employee.

The following guidelines help to determine whether there is a taxable benefit in kind; however, it does not necessarily mean that they apply to cases that do not exist in a two-tier transaction, or to specific examples where there is evidence that the benefit was basically for the employee. This would be the case, for example, if the employee and the employer have concluded an agreement under which the remuneration normally paid to the employee is

reduced in recognition of the total training costs borne by the employer.

There are basically three general categories of training:

Special training related to the employer:

Courses taken for the purpose to maintain and/or upgrade the employee's qualifications/skills related to the duties of the position held or more generally with the employer, when it is reasonable to assume that the employee will continue to work for a reasonable period after the completion of the course and will be considered to be of fundamental benefit to the employer and therefore will not be taxable. For example, tuition and other related costs, such as meals, travelling and accommodation, for a period which relate to the current and future responsibilities of the employee in the employer's business, are not taxable.

General Employment Training:

Other business lessons, even though not directly related to the employer's business, will generally be considered as non-taxable. Examples of non-taxable education will include courses such as stress management, job equality, first aid and language skills. Typically, training within the business will not be considered as a taxable benefit in kind.

Personal interest training:

Courses paid by the employer for the employee's personal interest or for the acquisition of technical skills not related to the employer's activities are considered as prime benefits for the employee and are therefore taxable. For example, tuition fees paid for a furniture (personal interest) lesson will result in a taxable benefit.

If an educational institution providing tuition offers training to a staff member or spouse or children without tuition fee or reduced tuition fee, the market value of the benefit must be included in the employee's income.

7.12 Uniforms and Special Clothes

It is not considered that there is a taxable benefit in kind when the employee is supplied with a special suit that is required in the course of performing his/her duties or when supplying

with special clothing (including safety shoes) designed to protect against the specific risks possibly to be present at the workplace.

Payments made by an employer to an employee for the cleaning of uniforms at a dry cleaner's shop, or directly to an employee as a reimbursement of these costs, are also not a taxable benefit in kind.

7.13 Transfer to the workplace

Employers often believe that it is faster and safer to bring employees to work places by providing vehicles that collect employees from predetermined points rather than when it is done by using private or public vehicles. In such cases, the provision of such vehicles is not a taxable benefit for the employee. However, payment of actual costs or the granting of compensation for the transportation to and from the place of employment must be included in the employee's income.

7.14 Recreational areas

When all employees are generally allowed to use recreation areas, e.g. gyms, swimming pools, tennis courts, golf courses, etc., without the payment of any amount or the payment of a small symbolic amount, then the benefit received by the employee from this use is not taxable.

Similarly, if the employer pays the amount required to become a member in a social or sports club, then the employee is not considered to have received a taxable benefit in kind if membership was basically for the benefit of the employer rather than the employee.

7.15 Relocation Expenses

If the employer compensates an employee for expenses incurred by the latter for the relocation of both himself/herself and his/her family, whether because he/she has been transferred to another establishment of the business or because he/she has accepted work in a place other than that in which he/she resides, this allowance shall not be considered as a benefit in kind.

The limit of the exemption above is the lump sum of €9.000 or the actual cost according to the bills. It also includes the actual costs

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incurred by the employer for the registration of the employee concerned in all public departments such as the Social Security Department, the Tax Department, the Migration Department, etc.

The abovementioned apply if the circumstances are the following:

- The employee is about to change his/her main residence due to a new job or change of duties or a change in the place where his/her duties are exercised;
- The distance of the new residence from the workplace that will perform his/her new duties should be within reasonable limits;
- The distance of his previous residence from the workplace that will perform his/her new duties should not be within reasonable limits.