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ΦΟΡΟΛΟΓΙΑΣ
TAX DEPARTMENT

Informative Guide on Benefits in Kind

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Introduction

The information contained in this document refer to cases where an employment relationship is in effect and as a result, income derived from individuals forming the relationship is considered employment income.

Unless the law otherwise provides, taxpayers receiving benefits in kind within the context of their employment are in general subject to taxation. The most common benefits in kind are described below and are classified as either taxable benefits or non-taxable benefits. In the later category, however, there may be a point beyond which the notion of a "privilege" is no longer valid; that is, the advantage gained by an employee is in fact a kind of additional remuneration, so the benefit is considered as a taxable benefit in kind.

When 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 of it and include it in Form T.D. 7 in column "Allowances and Benefits/Commissions" and to deduct the relevant tax due accordingly.

Chapter 1: Scope and Introductory Concepts.

1.1 What is a benefit in kind?

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

Although benefits in kind have the nature of ordinary income, they have certain special characteristics which require specific provisions, in order to:

- ensure that no doubts are raised as to the taxation of benefits in kind;
- establish in which cases and to what extent these benefits are presumed as benefits in kind;
- determine their value; **and**
- determine the method in which the tax will be paid.

Since benefits in kind are taxed in the same way as salaries, the employer who will be bearing the cost of providing them will be able to deduct such cost from his/her taxable income under the same conditions that this could have been deducted according to the provisions of the Income Tax Law and the relevant Circulars issued by the Tax

Department had it been the payment of a salary. As the legislation does not consider as deductible, expenses incurred for the use of a private motor vehicle, it is decided that the amount calculated as a benefit in kind relating to cars (as per the calculations provided in Chapter 4 of this document) will be considered accordingly as a deductible expense for the employer.

1.2 To whom does this Guide apply?

This Guide refers to benefits in kind provided to employees and persons holding an office. This fact should not lead to the conclusion that there is any distinction in law between employees and individuals holding an office. Payments in kind for services provided by a self-employed individual are taxable, but the manner in which they are accounted for is not regulated by this Guide.

The benefits provided by the employer to the employee apply equally to the benefits provided by:

- a company or partnership to an individual holding an office (including persons holding a position from which they exercise control over a company and partners in a company), **or**
- by a company to an employee or a person holding an office at a related company, **or**
- from third parties as a reward for services rendered within the context of an employment relationship or the holding of an office, **or**
- a member of the family or of the same household of an employee or an individual holding an office.

¹ Article 5 (1): Subject to the provisions of this Law, in the case of a person resident in the Republic, for each fiscal year, a tax shall be levied at a rate or rates, as specifically defined in this Law, on income accruing or derived from sources both within and outside the Republic, regarding -

(b) any profits or other benefits from any office or employment, including estimated annual lodging value, housing and food or home and any other benefit, monetary or of another form, granted in respect of wage-related services provided to the person providing the salaried services or to any member of his / her family;

References to this document to an “employer” and “employee” will be interpreted accordingly, with a reservation in relation to the context within which the reference is made.

1.3 Employees

Employees are individuals who provide services under an employment contract, irrespective of whether the content of the contract is expressed or implied, and whether services are performed on a full or part-time basis. A person who did not sign an employment contract, by virtue of the nature of his duties, could be considered as an employee. These instructions also apply to benefits in kind provided to a person who has ceased to be an employee, but such benefits continue to accrue as a result of his/her previous employment.

1.4 Office Holders

The term “Officer” is a broad interpretation and applies to:

- company directors;
- persons who perform duties similar to those of directors, even though they are identified by a different name;
- persons to the instructions of whom directors are accustomed to act;
- persons holding a position in the company from which they exercise control;
- persons (other than those mentioned above) holding office.

1.5 Controlling Positions

A person is deemed to hold a position from which he/she exercises control of 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 that company or a associated company or
- is directly or indirectly a shareholder of that company and the shares held by such person, together with any shares directly or indirectly held in this company by a

member or members of his family amount to more than 50% of the ordinary share capital or voting rights in that company.

1.6 Persons who have ceased to be employees or office holders

Where a person who was an employee, received 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 records the specific benefit in the Employer's Statement and issues a Certificate of Emoluments for his former employee with the corresponding withholding tax, if any. The same principle applies to persons who cease to hold an office.

1.7 Presumption for the provision of a benefit in kind

Benefits provided in the following cases are presumed to be provided as a result of employment or holding an office:

- benefits provided by employers to their employees;
- benefits provided by companies and partnerships to their officers (as this term is defined above);
- benefits provided by the company to a person who is not an employee or officer of that specific company but is an employee/officer of an associated company or that person is connected to an employee/officer of the company (employer).

An exemption from the above presumption is only applicable when it results that:

- the benefit is purely a personal offer, **or**
- is paid in settlement or against a debt that is not connected with the employment or the holding of office; **or**
- it is a dividend according to the provisions of the Income Tax Law, **or**
- the benefit consists in drawings made by a partner against an account relating to his

share of profits and is recorded as such in the records of the partnership;

- the benefit falls within the scope of sections 5 (1) (f) and 5 (2) (f) of the Income Tax Law.

When the result leads to the conclusion that the benefit is in fact remuneration for services provided as a result of employment or holding of an office, then it will be considered to be a benefit in kind without the need to apply the above presumptions and will therefore be taxable even if provided by third parties.

1.8 Associated company

A benefit granted by company A to an employee or an officer of associated company B will be considered as a result of employment or holding an office as if this was paid by B itself. Two companies are associated if:

- they are part of a group of companies as this term is defined 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 of the same household

When the benefit is provided to a member of the family or of the same household of a person who is in employment or holds an office, it 's treated as if it were provided to that person. If the person providing the benefit is the employer of that person, or the company, or the partnership where that person holds an office, the above mentioned presumptions will be deemed to have been applied. An exception to this rule will apply if it is proven that the member of the family or of the same household has received the benefit in his or her own personal capacity.

"Family members" of a person are the spouse and persons up to and including the third degree of kinship, 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 ordinarily reside in the same residence- whether related or not to him/her.

Example

If a company car is available to the Director, 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 by these individuals is also considered to be a benefit in kind. However, if the relative who enjoys the benefit in kind is not an employee or an officer of the company then the use of the car by that person shall be considered a benefit in kind to the person holding an office. The same tax treatment also applies if the car is not owned by the company but by its parent entity or other related company.

1.10 Obligation to declare

Beneficiaries who fail to declare benefits in kind will be liable to an additional tax for their omission according to the provisions of the Assessment and Collection of Taxes Law (N.4 / 78). Employees who are entitled to submit a declaration have an obligation to declare benefits in kind received because these benefits have already been included in the said employees Certificate of Emoluments (T.D.63) and the Employer's Return (T.D. 7) submitted by their employer.

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

1.11 Employer registration

A person providing "benefits in kind" to an employee and any corporation providing benefits

to its officers, even if the company does not have any employees, is considered as an employer by the Tax Department. Such persons, companies and partnerships should register as employers in the register and receive T.I.Cs enabling them to submit an Employer's Return (T.D. 7).

1.12 Interpretation of the term "remuneration"

The term "remuneration" or "emoluments" appearing in this Guide means any kind of 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, bonuses and tips, benefits in kind, expense payments and other allowances.

1.13 Allocation of the benefits in kind

When the benefit in kind is shared among two or more beneficiaries, each recipient will be deemed to have received the "share" of that benefit which will be subject to taxation and any tax due that is retained by the person who holds it.

1.14 Cash Allowances

All cash allowances paid to employees, excluding those cash payments given to employees for using their own car for business purposes, are fully taxable. **There are no cash allowances which are exempt from income tax.** The tax treatment for cash payments to employees in respect of the using their own cars for business purposes is explained below in this Booklet.

Chapter 2: Collection of Income Tax on Benefits in a Kind

2.1 The obligation to pay the relevant tax

The value of the various benefits in kind is determined in accordance with the valuation guidelines set out in this Booklet. These valuations will determine the 'salary value' of the benefit in kind which will be taxed in the same manner as

gross emoluments through the submission of the T.D. 7 Return.

Employers are obliged to declare the benefits in kind provided by them or by associated companies to them. The disclosure of the benefits in kind provided by third parties, e.g. bonuses and tips, against which the employer does not have any control, is the sole responsibility of the employee.

2.2 Determining the relevant PAYE deduction

Under the existing system PAYE deductions are made by cash payments, ie salary payment. With the addition of benefits in kind, the taxable gross emoluments will include a cash and a non-cash element. The calculation of PAYE will be applied on the basis of the total taxable gross emoluments but will be deducted from the cash portion. For obvious reasons the PAYE cannot be withheld from non-cash benefits in kind.

The following steps should be taken into consideration:

- determine the value of the benefit in kind payment for the relevant period in accordance to the instructions included in this Booklet;
- add the value of the benefit in kind for that payment period to the gross emoluments earned in that period;
- calculate the PAYE deduction by reference to the gross amount (benefits in kind value plus gross emoluments); and
- deduct the PAYE from the cash portion.

2.3 Records

Employers are required to keep records indicating how the value of the benefits in kind has been determined and these records should be available for inspection when requested by the Tax Department.

It should be noted that benefits in kind can be on a continuous basis, such as in the case of a business car, accommodation, loan, etc., or it may

be a one-off benefit, such as the transfer of an asset, airline tickets, discounts, etc.

Employers have an obligation to make such differentiation in order to maintain satisfactory records which can justify the tax treatment of the benefits in kind. For example, the value of the car or boat will not change during the year, unless these change during the year. It is therefore expected that records will be retained to show how a continuous in-kind provision was determined at the outset and which valuation criteria have been applied, as well as how the one-off benefits in kind have been determined and valued, including the documents used for that purpose.

It would be preferable for employers to consult the local District Tax Offices of the Tax Department in relation to which records should be kept.

2.4 Records to be kept for company cars

Employers must keep specific records for all owned, hired or leased cars, regardless of whether they are available for private use to their employees. This record must be kept up-to-date and available to the Tax Department upon request.

It should include the following:

- a description of each car: registration number, make and model;
- the year of first registration in the Republic;
- in the case of a used car (imported from abroad), the year of its first registration outside the Republic ·
- the car value, when it is new, includes taxes and licenses, plus any discounts that have been taken into account All relevant documents and invoices are required. In the case of a second-hand car the Tax Commissioner may proceed with his own estimation;
- the name of the beneficiary, indicating whether he is a salesperson or support person;

- address and description of the place where the vehicle is garaged;
- whether the car is owned by the employer, leased or hired.

Chapter 3: Categories of benefits in kind

3.1 Classification of benefits in kind

Benefits in kind are classified under three categories:

- Car Benefits.
- Use of assets, including accomodation.
- Other benefits in kind.

Employers must report and withhold the relevant tax based on the value of the benefits in kind arising under these categories. However, there is no obligation for the separate reporting of taxes arising on these benefits according to each category because the relevant tax cannot be separated and determined separately in the Employer's Declaration (T.D.7).

3.2 Description of the categories of benefits in kind

(a) Benefits in kind in relation to cars.

These benefits include:

- the cars owned/leased or hired by the employers and made available to their employees or officers for the private use and
- cash allowances paid to employees or officers in respect of the use of their own cars, for their business duties.

(b) Use of assets owned by the business, including accomodation.

This category refers to the use of assets owned, leased or hired by employers and made available to their employees or officers for their private use. This category excludes the use of cars included in Category 1, but refers to the private use of

residences, boats, airplanes, furniture, machinery, etc.

(c) Other benefits in Kind.

This category addresses various other benefits in kind that do not fall within the above mentioned categories. Such benefits include, inter alia, transfers of assets at subsidized prices, reimbursement of various utility bills, schools etc. and the supply of goods or/and services free of charge or at reduced prices, such as entertainment, meals, trips, etc.

Chapter 4: Determining the value of Benefits in Kind of Category 1.

4.1 Car Benefits

Benefits in kind that relate to the use of motor vehicles can be classified into three types:

- use of cars
- use of commercial cars (van type) and
- car cash allowances

4.2 When does the benefit in kind arise?

Benefits in kind arise usually when there is an element of private use, that is presumed to exist:

- when the car is placed at the disposal of one particular person; or
- when the car is available for use outside normal working hours; or
- when the car is not kept on the premises of the employer/company/partnership overnight or the weekends; or
- whenever the car is regularly used for private purposes.

4.3 Car use within the context of executing business duties

Individuals who are employed as drivers and/or messengers/distributors as well as other persons that, in the performance of their duties, are

required to use cars owned, leased or hired by their employer, but are not permitted to use the vehicle outside working hours, are not considered to enjoy any benefit in kind, even though they may park the car near their private residence.

This provision does not apply to any employee who is not employed as a driver and/or a messenger/distributor who is not required to use cars owned or leased by the employer in the normal performance of his/her duties. For the purpose of determining the value of the benefit in kind, the same criteria apply to all cars, regardless of whether owned, hired or leased by the employer.

4.4 Annual Value of the benefits in kind

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

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

4.5 Car Value

The car value is calculated as:

- In the case of cars that are purchased new by the employer, the car value is equal to the actual cost as shown on the invoice (including VAT, customs duties, registration fee, plus any other taxes and delivery expenses). The value of any discounts of a personal nature obtained, other than discounts available to the general public, such as 'trade fair discounts' or other 'special discount offers', **must be added back** to the amount shown on the invoice. The actual cost of any extra equipment added to the car should also be added to the amount shown on the invoice, regardless of whether the purchase is made before or after the delivery of car. The value of the extra accessories must include all amounts of taxes, as well as the delivery expenses and installation costs.

- In the case of second-hand and privately-owned cars that were purchased before 1/1/2018, for which the actual cost (as if the car is new) cannot be determined easily, the value will be determined by the Tax Department, taking into account all relevant information.

The addition of any new equipment will result to a new 'car value'. Therefore, the value of the benefit in kind will be affected. In such cases, the value of the 'benefit in kind of the car' will apply from the date of installation of the new equipment.

4.6 The car use value

The car use value is 17% of the car's value.

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

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

4.7 Repairs and maintenance value

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

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

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 car value as follows:

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

However, when the fuel is paid separately (cash/ lump sum is paid), then the benefit in kind related to the car is calculated without the benefit of the fuel, and the cash compensation is fully taxed without any deduction.

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

4.9 The private use value of the car

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

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

4.10 Reduction of the private use value of the car (a point to point journey)

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

A journey between two locations 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.

When the above conditions are met, then the employer must submit the appropriate form to the Tax Department to reduce the value of the private use to 20%.

4.11 Various Examples

Example 1:

The car was purchased in 2012 - The car value is €18.000 – Fuel costs are paid by the employer.

Step 1:	Calculate the car use value =17% of the car's value =17% $\times$ 18.000 =3.060	Step 2:	Add the repairs and maintenance value =3% of the car's value =3% $\times$ 18.000 =540
Step 3:	Add the fuel value =3% of the car's value =3% $\times$ 18.000 =540	Step 4:	Calculate the private use value. Determine the percentage (%) from the Table, i.e. 30%. =30% $\times$ (3.060+540+540)=1242

In this example, the employee's gross emoluments are increased by €1.242, i.e. €103.50 per month, prior to the withholding of the PAYE.

Example 2

The car was purchased in 2014 - The car value is €30.000 – Fuel costs are paid by the employer.

Step 1:	Calculate the car use value, 17% of the car's value =17% $\times$ 30.000 =5.100	Step 2:	Add the repairs and maintenance value =4% of the car's value (the car's value exceeds €28.000) =4% $\times$ 30.000 = 1.200
Step 3:	Add the fuel value =5% of the car's value (the	Step 4:	Calculate the private use value. Determine the percentage (%)

car value exceeds €28.000) = 5% $\times$ 30.000 = 1.500	from the Table, i.e. 50% =50% $\times$ (5100+1200+1500) =3900
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In this example, the employee's gross emoluments are increased by €3,900, i.e. by €325 per month prior to the withholding of the PAYE.

Example 3

The car was purchased in 2008 - Car value is €20,000 - The cost of the fuel is paid by the employer.

Step 1:	Calculate the value of use of the car, 8% of the car's value because the car's life exceeds 6 years of life. =8% $\times$ 20.000 =1.600	Step 2:	Add the value of repairs and maintenance value =3% of the car value =3% $\times$ 20.000 =600
Step 3:	Add fuel value, 3% of the car's value = 3% $\times$ 20.000 = 600	Step 4:	Calculate the private use value. Determine the percentage (%) from the Table, i.e. 40% =40% $\times$ (1.600+600+600) =1.120

In this example, the employee's gross emoluments are increased by €1.120, i.e. by €93,33 per month prior to the withholding of the PAYE.

4.12 Period less than one year

In the case where a benefit in kind arises due to the use of a car which is available to the employee for less than a year (e.g. in cases of a new recruitment, retirement or some other reason, due to job determination, etc.), the annual value of the benefit in kind will be decreased accordingly, i.e. the value of the benefit is calculated on the basis of the actual time period (months) of the use of the car. If the car is used by the employee for more than 15 calendar days, then the period for using the car will be considered as a whole month.

4.13 Car Replacement

If the car is replaced during the year by a different type of car, unless the replacement is made temporarily, e.g. when the replacement of the car is made during its repairment, then the initial estimate of the car value will be considered as part of the costs and a new valuation should be made based on the value of the new car. The new valuation will be applicable from the date the new car is first used.

There will be no deduction from the value of the benefit in kind if the car is not available for a period of less than 30 days. If the replacement car is available, the initial value will still apply. If the car is not available for a period of more than 30 days, a pro-rata deduction should be performed 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 private use, then a taxable benefit in kind arises. A commercial vehicle is a car primarily manufactured for the transfer of goods or other load (but not passengers) of a maximum weight capacity of 3.500 kg.

The value of the annual benefit in kind for commercial cars is defined as a single amount of €500 annually, regardless of the type, model or manufacturing year/registration date of the relevant commercial vehicle.

4.15 Direct payments for car use

If cash is paid to an employee by way of a 'car allowance', with respect to the use of his own car for business purposes, the allowance is taken to include an element of benefit in kind which is subject to income tax. The value of the benefit in kind is calculated as follows:

- If the annual allowance is equal to or less than €3.000, the value of the benefit in kind is 50% of the compensation.

- If the annual compensation exceeds €3.000, then the value of the benefit in kind is equal to the annual compensation minus €1.500.

Any reimbursement (including a reimbursement made by means of vouchers/credit cards etc.) in relation to the cost of fuel paid to an employee who already receives a cash allowance for the car, is added to that amount and 50% or an amount or €1.500 (maximum) is deducted from the total amount.

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

- the allowance is specified in the collective agreement or in the employee's employment contract; and
- the employee is not a director, partner or anyone else that holds a controlling position in the company or in the partnership;
- the employee uses his/her personal car;
- the employee does not receive any other benefit from the use of another vehicle owned by his employer.

When any of the above conditions is not met, the full amount of the cash allowance is taxable.

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

When an employee uses a car owned by the employer, which leads to a benefit in kind and at the same time the employee pays instalments for the purchase of the particular car, then the car is considered that belongs to the employer until the date of the transfer of the car ownership to the employee. Until that date the value of the benefit in

kind each year is calculated based on the total value of the car.

It should be clarified that the transfer of the car ownership to the employee, may constitute an additional amount of benefit in kind. The calculation of the abovementioned benefit in kind is calculated as follows:

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

4.16 Multiple car cash allowances

When a beneficiary receives more than one cash car allowance either from the same employer or from other related employers or different employers, the deduction of 50% with a maximum of €1.500 can only be used once i.e. can only be applied on one cash allowance. **It is the employee's responsibility to inform his employer that he has already benefited from the deduction relating to the cash allowance for the car use and no further deductions should be claimed.**

Example:

A beneficiary receives two car cash allowances of €300 per month.

On the first car allowance the taxable value of the benefit in kind will be €3.600 minus €1.500 = €2.100.

On the second car allowance, the taxable value of the benefit in kind will be €3.600 minus 0 = €3.600.

In all other cases, any cash allowances are fully taxable according to the ordinary PAYE rules.

4.17 Mileage based reimbursements

When the reimbursements are made to an employee for using his/her own car for business purposes and such reimbursements are made according to the distance travelled, i.e. the costs are reimbursed at an agreed price per kilometre

travelled, these reimbursements do not constitute a benefit in kind, provided that:

- the payment rate for each kilometer does not exceed 25 cents per kilometer (appropriate amendments will be made in accordance with the Circular on Traveling Allowances issued by the Public Administration and Personnel Department);
- payments cover only the business use element;
- the reimbursable travel is to be recorded in a logbook which is readily available for a verification by the Tax Department; and
- the logbook is kept by the employer for at least six years.

If any of the above conditions is not met, the full reimbursable amount, will be treated as a car cash allowance for the use of own car and will be subject to the same valuation criteria (refer to paragraph 4.15).

Determination of the value of Benefits in Kind of Category 2

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

This chapter relates to the provision to an employee of assets that are owned, leased or hired by the employer. These assets include accommodation, furniture, boats, aircrafts, machinery, etc. Any cost directly linked to such provision is deemed to be part of the value of the benefit in kind.

The provision of computers, other related equipment and internet services is specifically excluded and is not included in the value of the benefit in kind.

It is clarified that the above does not apply in the case of private boats and aircrafts where the payment of the value added tax and the amount of income tax has been predetermined by the Tax Department, as well as for properties which belong to legal entities that do not exercise an economic activity.

5.2 Determination of the value

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

- In the case of immovable property owned by the person providing the benefit in kind, the value of this benefit is 4% of the higher of the market value and the original cost. The 4% rate applies not only to the property related to accommodation but also to other types of immovable property such as garages, offices, warehouses, stadiums, etc.
- Where the owner rents immovable property to an employee or director, a benefit in kind will also arise if the agreed rent is **less** than 4% of the market value or the initial cost of the relevant property, whichever is the higher. The value of the benefit in kind will be the resulting amount minus the agreed rent payable.
- As in other cases, the records must be retained by the employer regardless of any payments/reimbursements made by the employee.
- In case of property/accommodation 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 under this category, arising out of the use of assets other than immovable property, the value of the benefit in kind shall be equal to 15% of the higher of the market value or the original cost. After an ownership of six (6) years, the original 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 first

occupation by the beneficiary and in the case of movable assets the benefit in kind is deemed to be provided when it is first made available to the beneficiary. In any case, the benefit in kind continues for as long as the asset is available to the beneficiary.

5.3 Additional costs

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

Any cost paid by the employer that permanently increases the value of the relevant immovable property or asset, such as improvements and additions, will effectively lead to an increase in both the original cost and the market value. An example would be the extension of an existing building or the conversion or reconstruction of an existing old building or when the equipment of a boat is upgraded with additional jetties, engines or other accessories. In such cases, a new valuation of the relevant immovable property/asset by a professional valuer must be made and the value of the benefit in kind re-calculated accordingly.

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

When the employer pays for any expense connected with the normal use of the asset, without increasing the value of the asset on a permanent basis, e.g. water, electricity, domestic services, redecorations, repairs of any kind, professional fees, insurance etc, this also constitutes a benefit in kind. Such expenditure is fully taxed in the year it is incurred and the relevant cost must be added to the value of the benefit in kind for that year.

5.4 Insurance cover of the immovable property provided as a benefit in kind

When the employer, or the company pays the expense for insurance cover for property used as a mortgage guarantee to cover the liabilities of that

company, then it is not considered as an additional cost if that property is used to provide a benefit in kind and should not be taken into account for the calculation of the 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 by way of reimbursement of bills or other expenses connected with the use of the asset, to the extent that the value of such payments were taken into account when calculating the value of the benefit in kind.

5.6 Market value

The market value is estimated on the basis of the price that the asset would reasonably fetch in the open market during the time when it is first made available. In the case of immovable property, the value is determined as the estimated value of the Land and Surveys Department at 1.1.2013 or any other later estimation made.

5.7 Cost of Immovable Property

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

5.8 Provision of accommodation which is not considered a benefit in kind

Provision of accommodation is not a benefit in kind if:

- the relevant property is considered to be the official residence available by a public authority or a public institution in virtue of a public office; or
- the accommodation is available temporarily as part of specific security measures; or
- the employee is bound by the terms of his/her employment contract to reside in the residence that is provided by the employer for the better performance of his/her duties, and it is

customary for employers to provide such accommodation in connection with such or similar duties; 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 makes available his owned property, for use to an employee for the taxable year 2017.

The market value estimated by the Land and Surveys Department as at 1 January 2013, is €200.000. Additionally, the employer pays €6.000 for various bills, while the employee reimburses €2.000 out of the €6.000 paid by the employer for the same bills.

Step 1	Calculate the annual benefit value: 4% of market value $= 4\% \times 200.000$ $= 8.000$	Step 2	Add the expense paid by the employer: $= 8.000 + (6.000 - 2.000) = 12.000$
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In this example, the employee's gross emoluments will be "increased" by €12.000, i.e. €1,000 per month, before the deduction of PAYE.

Example 2

An employer rents a property for €1.300 per month, which he puts at the disposal of the director. In addition, the employer pays various bills worth €4.200.

The director does not pay any amount in relation to this property.

Step 1	Calculate the annual rental value: $= 1.300 \times 12 =$ 15.600	Step 2	Add the expense paid by the employer $= 15.600 + 4.200 =$ 19.800
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In this example, the director's annual emoluments are increased by €19.800, i.e. €1.650 per month, before the deduction of PAYE.

Example 3

An employer makes available a boat owned by the company to one of its directors and his family. The boat was purchased in 2000 for €120.000. In addition, the employer also pays €6.000 for the maintenance and upkeep of the boat, whilst the director pays €2.000 to cover the fuel cost. The boat is valued on 1 January 2017 by a professional valuer at €80.000.

Step 1	Calculate the annual benefit value As the employer owns the boat for more than 6 years, the initial cost is reduced by 40%, which equals to: $€120.000 \times 60\% = €72.000$ $= 15\%$ of higher of 72.000 and 80.000 $= 15\% \times 80.000 = 12.000$	Step 2	Add the expense paid 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 directly incurred by him, which he was not reimbursed by the employer and will not be included in the calculation of the value of the benefit in kind.

In this example, the director's gross emoluments are "increased" by €18.000, i.e. €1.500 per month, before the deduction of PAYE.

5.10 Immovable property with right of use

When the employer owns a property under a leasehold agreement, the value of the benefit in kind is calculated as if this property is owned by the employer and the annual value of the benefit in kind is 4% of the market value or original cost, whichever is the higher. In such a case, the market value of the property will be the market value as if the property is in full ownership (freehold).

Chapter 6: Determination of the value of Benefits in Kind of Category 3.

6.1 Category 3: Other benefits in kind-introduction

Any other benefit in kind that does not fall within categories 1 and 2 is considered to fall into this category, e.g. transfer of assets at subsidized prices, reimbursement of personal expenses (benefits, fees, etc.), and the free supply of goods or the sale of goods and services with discounts such as travel, entertainment, meals, domestic services, professional advice, transport etc.

6.2 Determination of the value of benefit in kind

The determination of the value of the benefits in kind of Category 3 which consists the supply of goods or the provision of services is determined as follows:

6.2.1 In-house property benefit in kind

In-house property is property which consists goods or services manufactured, processed or otherwise treated by the employer as part of the employer's business or by an associated company as part of that company's. In such cases the value of the benefit in kind is determined as being the difference between the normal selling price of such good or service (less any discounts available to the general public) and the price (if any) at which the good or service is actually provided to the employee.

6.2.2 External property benefits in kind

The benefit in kind arising from external property consists benefits which are not covered by 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 provided to the employee.

6.2.3 Transfer of assets

Where the benefit in kind consists in the transfer of the ownership of an asset, both tangible and intangible (which would normally be a one-off 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 an "in-house property"; or
- the higher of the original cost to the employer or the market value of the relevant asset less the price at which the asset was transferred to the employee in the case of "external" property.

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

In the case of the transfer of an "external" movable asset not falling under paragraph 6.2.1., that is more than six (6) years old (from the date of acquisition by the employer), **the employer's cost** is reduced, only for the purpose of determining the value, to 60% of the original cost.

6.3 Share purchase plans

The right to purchase shares in a company is another form of a benefit in kind. In ordinary plans of this type, company employees have the option to buy or apply for a purchase of shares of the company or in an associate company at a predetermined price. This option will be valid for a specific period and the employee will be able to exercise this right at any time when the value of the shares is likely to increase.

The cases where the grant of the right to purchase shares from the company to the employee are considered as benefit in kind are referred in the Circular 2009/11, dated 17/11/2009 with all the relevant calculations.

6.4 Reimbursements

6.4.1 Private expenses

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

Private expenses include utility bills such as water, electricity, school tuition fees, private education, scholarships, meals, entertainment, travel, and so on. This benefit is excluded for a limited number of cases (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 with which the employee is reimbursed plus any other costs directly paid by the employer.

Reimbursements of costs incurred by an employee on behalf and in the exclusive interest of the employer shall not be regarded as benefits in kind if these are supported by receipts issued in the name of the employer. Such expenses may or may not be claimed by the employer in accordance with the relevant provisions of the Income Tax Law relating to deductions.

6.4.2 Business travel

The total cost of business travel is not a benefit in kind. This cost includes the cost of tickets, accommodation, meals and other costs deemed necessary for participating in the business trip in question. Business travel includes 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 excluded, subject to the conditions for the exemptions for the programs and scholarships listed below (see Chapter 7: Exemptions). When the private part of the trip is very small and incidental, it will be

disregarded. However, when the private part is substantial, such as when the employee is accompanied by family members or the duration of the stay is quite long in relation to the business purpose of the trip, then it will not be considered as a business travel and the full cost will be considered as private cost.

Please note that if a lump sum of up to €250 per day is given which is associated with the normal travel costs, is not considered a taxable benefit. However, if the actual cost covered by the employer and an additional amount is granted as a per diem, then this is a taxable benefit.

It is clarified that it is also not a benefit in kind any cost that arises for business trips within the Republic to another city, if deemed necessary.

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

As previously explained, the benefit in kind arises when goods and/or services manufactured or processed by the employer or by a related party to the employer as part of its activities, are provided to the employee at a discounted price or for free. The first €500 of the value of such benefits in any calendar year are exempted from taxation as benefit in kind if:

- the beneficiary is not a director or a person who does not hold an office through which he/she can exercise control; and
- the employer operates a scheme entitling employees to free or discounted goods or services directly manufactured or processed by the employer.

In the case of goods provided at a discount, the value of the benefit in kind is equal to the difference between the selling price of the goods or service and the actual price paid by the employee to the employer. «Selling price» means the ordinary selling price available to the general public

including any discounts generally provided to the public.

When the benefit in kind consists of the free allocation of airplane tickets (by the employer) in the context of its business, i.e. when the employer operates in the airline industry, the value of the benefit in kind is the higher of:

- the actual cost borne by the employer in providing of the benefit; and
- 20% of the market value of the relevant ticket in the economy class.

6.6 Free or subsidized meals

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

- (a) the provision of subsidized meals is available to all personnel in the business premises only, or
- (b) the benefit is provided during an organized event.

The value of the benefit in kind includes the cost of food, preparation and services; i.e. the actual cost borne by the employer. It should also be applied in real data i.e. taking into account the number of employees, the number of days for which the meals are provided etc.

The above treatment applies irrespective of any provisions included in employment contracts.

6.7 Gifts to employees

A gift (either in kind or in cash) from an employer to the employee is a benefit derived during or by virtue of the employment of the recipient. When the value of the Christmas gift, or of a proportionately similar occasion, does not exceed the amount of €300 and the employer does not claim its cost as a deductible expense in computing taxable income, the gift is not required to be reported as employee's income. This practice will only apply to one gift per employee

every year, except in cases where the employee gets married, in which case, it will apply to two gifts.

When an employee is rewarded by an employer with merchandise or non-cash items, the market value of the award must be included in the employee's income. If the non-cash item is personalized with the company's logo, or is engraved with a message or the employee's name, its market value may be negatively affected. In such cases the amount to be included in the employee's income may be reduced (by a reasonable amount) taking into account all the facts and circumstances. Depending on the value of the particular award, the existence of a logo may have little, if any, impact on the market value of the item. When the award given is a plaque, trophy or other memento of nominal value for which there is no market value, then it is not necessary to include any amount to the employee's income.

Where an employee receives from his/her employer a performance-based award (non-cash) e.g. based on sales or for other services rendered, the market value of such incentive is considered as remuneration included in the employee's income unless the employer does not claim such incentive as expenses.

6.8 Cost of Tools - Reimbursement

Where the employer makes payments to its employees (in cash) to offset the cost of tools (do not include consumables) that the employees are required to have in order to perform their work, the amount of the payment must be included in the employees' income. It is understood that the said tools shall be the property of the employee and not of the employer.

6.9 Leisure trips. Various gifts and incentive awards

When the employer pays the cost for the employee's vacations, or of the employee's family or both, this cost is considered as a taxable benefit in kind. Likewise, the use by the employee, or by

his/her spouse or by both of them, of a holiday home which belongs to the employer, constitutes a taxable benefit in kind, the value of which is equal with the market value of the accommodation less any amounts paid by the employee to the employer.

However, the taxable benefit in kind may be ignored if there is definitive evidence that the employee, during his/her vacations, was involved in business activities for the employer.

In a situation where the presence of the employee is deemed necessary for business purposes and this function is the main purpose of the trip, no taxable benefit in kind shall be deemed to arise in respect of the employee's travel expenses that are deemed necessary for the attainment of the business purposes of the trip, if such expenses are reasonable vis-à-vis the business operation. Where the business trip is extended to provide for a paid holiday or vacation, the employee is considered to receive a taxable benefit in kind equal to the cost borne by the employer with respect to that extension.

Chapter 7: Exemptions

7.1 Introduction

As previously mentioned, there many instances in which a benefit received by the employee will not be taxed, in whole or in part as a benefit in kind. In addition to the aforementioned cases, the rules provide exemptions on the following items.

Attention should be drawn to the fact that the exemptions included in the present Guide are not applicable when the relevant benefit in kind takes the form of cash allowance. Exemptions apply only to the extent the payment or reimbursement to the employee are made against actual costs against actual receipts. Any receipts reimbursed shall be kept on record by the employer for the purposes of a tax audit to be carried out by the Tax Department at a later stage.

7.2 Telephone calls

Any payments or reimbursements provided for landline or mobile phones are excluded from the rules outlined herein and are not taxable in the hands of the beneficiary.

Any payments or reimbursements made to employees in respect of telephone services are exempted only when made against actual receipts. Any form of cash allowance in respect of telephone services will be taxed on the full amount.

7.3 Computer Equipment.

The use of computers and other related equipment including the provision of internet services by the employer is excluded from the rules outlined herein and do not constitute a taxable benefit in kind to the beneficiary. However, the provision of free internet and other gratuitous subscriptions will be taxed as a benefit when the employer is the provider of the service.

7.4 Childcare facilities

The services concerning the care and entertainment of children that are provided on the employer's premises for the benefit of the employees are exempt from taxation. In addition to that, such facilities provided on the premises of an associate company are similarly exempt.

7.5 Goods consumed on premises

Goods provided to employees for consumption on the employer's premises during working hours are exempt from taxation. For example, this will apply in the case of a brewery providing its employees beer for consumption on the premises, during working hours. In the case of a corporate employer, the exemption is extended to goods consumed on the premises of an associated company.

7.6 Newspapers

Newspapers and/or magazines or subscriptions to newspapers or magazines, relevant to the nature of

the business which are available for use by the employees are exempt from taxation. This also applies to similar items made available via electronic means such as subscriptions to websites. However, the exemption does not apply where there is no business use or where the business use is merely incidental.

7.7 Subscriptions to professional bodies

The subscriptions paid by an employer in respect of the membership of the employee in a professional body are exempt from taxation provided that the said membership is considered necessary for the carrying out of the employee's duties and the employer is basically the person who benefits from the payment.

Whether the employer is the person mainly receiving the benefit is a matter of actual facts. If the membership is not a condition for employment, the issue of the main beneficiary will need to be resolved. The employer is responsible for making the determination in question; however, the employer has to be in a position to justify its decision when asked by the Tax Department.

7.8 Indemnity Insurance

Insurance or indemnity paid by an employer for the purpose of providing cover against personal liability of its officers that arises out of the performance of the employees' functions are exempt.

7.9 Awards for long-term service

The awards given in recognition of service of fifteen years or more are exempt from taxation provided the taxable value of the award does not exceed a specified maximum value (€100 per year of service) and the recipient has not been given a similar award in the last ten (10) years. Any value in excess of the amounts mentioned above shall constitute taxable income to the recipient.

7.10 Christmas parties and events

An annual Christmas party or an alternative function of a similar nature such as an annual gala dinner generally available to all employees 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 Courses/Scholarships to employees

Expenses paid by an employee, or expenses for which the employee is reimbursed, within the context of participating in a training course or a continuing vocational education program (lifelong learning) will be exempt from taxation if the following conditions are fulfilled:

- The training course leads to acquiring knowledge or skills that are (a) necessary for the duties of the employment, or (b) directly related to increasing effectiveness in the performance of the employee's present or future duties without necessarily leading the employee to obtain a qualification.
- The relevant expenses consist of (a) tuition fees of the course, (b) the cost of the necessary books and other course materials required.
- If the employee is temporarily out of the employer's normal business premises whilst attending the course, the relevant expenses may include (a) additional expenses, incurred in travelling to and from the training location, and (b) reasonable upkeep costs while participating in the course. If the course takes place abroad, the relevant expenses also include travel and accommodation costs.

A taxable benefit in kind arises when the training is primarily for the benefit of the employee.

The following guidelines assist in the determination of whether a taxable benefit in kind exists; however,

they do not necessarily apply in non-arm's length relationships or in specific examples in which there is evidence that the benefit was in fact primarily for the employee. For example, if the employer and the employee have entered into an arrangement under which the remuneration ordinarily paid to the employee is reduced in recognition of training costs incurred by employer.

There are mainly three general training categories:

Specific Employer – Related Training courses: Training courses taken for the purposes of maintaining and/or upgrading the qualifications/skills of the employee which are related to the duties of the position held or in general with the business activities of the employer, will be considered to be mainly beneficial to the employer and therefore will not be taxable if it is considered reasonable to assume that the employee's employment will continue for a reasonable period after the completion of the course. For example, tuition and other associated cost such as meals, travel and accommodation which are paid for training courses in a sector related to the employee's current and future responsibilities in the employer's business activities, will not be a taxable benefit.

General Employment - Related Training: Other courses relevant to businesses will generally be considered as non-taxable benefits even if they are not directly relevant to the employer's business activities.

Examples of non-taxable training courses will include stress management, employment equality, first aid and language skills courses. Normally, in-house training is not considered as a taxable benefit in kind.

Training courses of a Personal Interest: Training courses paid by the employer for the employee's personal interest or for the acquisition of technical skills which are not related to the employer's business activities shall be considered as mainly beneficial to the employee and are taxable. For

example, if tuition fees are paid by the employer for a carpentry course (personal interest) would result in taxable benefit.

Where an educational institution which charges tuition fees, provides tuition free of charge or at a reduced amount to an employee or to the employee's spouse and his/her children, the market value of the benefit should be included in the employee's income.

7.12 Uniforms and Special Clothing

When the employee is supplied with a uniform which is required during the performance of his duties or when supplied with specialized clothing (including safety footwear) which is designed to protect against the specific hazards that may exist in the workplace, then there is no benefit to be considered as taxable.

The payments made by the employer to the employee in respect of dry-cleaning the uniforms or the direct reimbursement of such expenses to employee are also not deemed to be a taxable benefit to the employee.

7.13 Transportation to the Workplace

Employers sometimes find that the transportation of employees to the workplace by using transportation means, from pick-up points, is faster and safer than when it is done by using private or public vehicles. In these circumstances the employees are not regarded as in receipt of a taxable benefit. However, a reimbursement or allowance paid to the employee for transportation to and from the location of employment must be included in income.

7.14 Recreational facilities

Where all employees are permitted to use recreational areas, e.g. gyms, pools, tennis courts, golf courts etc., without payment or with the payment of a small amount, the benefit received by the employee from such use is not taxable.

Likewise, if the employer pays the rights required for the employee to become a member in a social or sporting club, then the employee is not considered that he/she has received a taxable benefit where this membership was principally for the employer's advantage rather than the employee's.

7.15 Relocation expenses

When the employer reimburses the employee for expenses suffered by the latter for relocation of himself/herself and of his/her family, either because he/she has been transferred to other premises of the business or because he/she has accepted a job in a place other than his/her place of residence, such compensation is not considered as a benefit in kind.

The aforementioned exemption is limited to €9.000 (maximum) or the actual cost supported by invoices. In addition to the above, the actual costs incurred by the employer for the registration of this employee with all governmental departments such as the Department of Social Insurance, the Tax Department, the Migration Department etc., are also included.

The above applies if the following are fulfilled:

- The employee is changing his main residence due to new employment or a change in his/her duties or a change of the place where his/her duties are exercised.
- The distance of the new residence from the workplace in which his/her new duties will be carried out must be within reasonable limits.
- The distance of his/her previous residence from the workplace which will carry out his/her new duties is not within reasonable limits