Expense Allowance Scheme
2018

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1 The Expense Allowance Scheme

The Expense Allowance Scheme (EAS) is a new scheme regarding the tax treatment of allowances paid and benefits in kind provided to the staff. Unlike the former specific rules per cost type or provision of a benefit in kind, the EAS contains more general rules in order to determine what part of an allowance or benefit in kind provided to the staff is (not) taxed as gross wages. This may vary from a fixed expense or kilometre allowance for the use of own transport, providing a telephone or tool, to staff parties and plants on your employee's desk.

The EAS was introduced as a mandatory scheme from 1st January 2015. This means that the option system, which had been effective since 1st January 2011, was cancelled from that date. Compared to the EAS applicable up to and including 2014, the following changes have been implemented from 2015.

Changes from 2015
The following six changes have been adopted in the 2015 Tax Plan, which will be further explained in the chapters below.

Reduction of the free space from 1.5% (2014) to 1.2% from 1st January 2015:

- the limited introduction of the necessity criterion;
- an annual settlement system;
- exemption for industry-specific products (staff discount);
- removal of the difference between the payment of an allowance or providing a benefit in kind in certain cases (including providing facilities);
- introduction of the group scheme.

Changes from 2016
On 22nd December 2015, the Dutch Upper House passed the proposed adjustments to the EAS from 1st January 2016 as adopted in the bill for the 2015 Assembled Tax Laws Act and the 2016 Tax Plan and the 2016 amending Act for the Tax Plan. The changes to the EAS are as follows:

- the customary criterion will be tightened up (see Ch. 3.1);
- the interest benefit for the staff loan for their own house will be taxed (see Ch. 8.2).

Summarising, the scheme involves that you are allowed to supply 1.2% (2016) of the total taxable wages (column 14 of the payroll record, wages before wage tax/national insurances) of your employees untaxed in allowances and benefits in kind (the free space). You may distribute this total amount (randomly) among the employees. Any allowances and benefits in kind must therefore be added up, subject to a number of explicitly mentioned exceptions. If the allowances and benefits in kind exceed the free space, the excess part shall apply as taxed wage for the employee or may be assigned by the employer as a final-levy component that is taxed with an 80% final levy. This 80% will be added to the amount of the allowance or benefit in kind and must be paid by you, the employer.

Changes from 2017
On 20th December 2016, the Upper House passed the 2017 Tax Plan. No substantial changes have been adopted in the 2017 Tax Plan with respect to the EAS.

Changes from 2018
No substantial changes have been adopted in the 2018 Tax Plan with respect to the EAS.

Example year 2018
If your wage bill is € 1,000,000 and the benefits in kind and allowances within your company are less than or equal to € 12,000, then these will be free. If the value of the allowances and benefits in kind exceed the amount of € 12,000, then you, the employer, must pay a final levy of € 0.80 per euro (80%) on any amount exceeding € 12,000 (assuming that you have assigned the allowance/benefit in kind as a final-levy component).

Many detailed rules for various expense allowances and benefits in kind will disappear because of the EAS. For example, the conditions for the company bicycle. This will make everything much more simple. It does mean, however, that you will have to outline all of your allowances and benefits in kind to your staff in order to assess what is and is not included in the free space.
Additionally, a number of specific exemptions, zero valuations and necessity criteria have been introduced for business expenses.
Your first task will therefore be to take stock of all the allowances and benefits in kind provided to your staff. Make sure to use your administration and complement it with allowances and benefits in kind adopted in your terms of

employment (and e.g. in your personnel handbook, collective labour agreement, etc.). Please refer to chapter 11 for further details on the implementation of the EAS.

2 Categories

Once all the allowances and benefits in kind have been collected, they must be categorised (see Ch. 10). Some of the allowances do not constitute a wage (such as small gifts or intermediate cost) and other allowances constitute a compulsory individual employee's wage (such as the company car).
Besides this, not all allowances and benefits in kind are included in the free space. The following allowances and benefits in kind have been made tax exempt and need not be included:

- Exempted wages;
- Zero valuation;
- Specific exemptions.

If the allowances and benefits in kind are not included in one of these categories, they will automatically be part of the employee's taxable wages or as labour cost if they are designated as final-levy wages. For this reason, it will be relevant to correctly categorise all the allowances and benefits in kind.

The wage bill
Once you have all the allowances and benefits in kind lined up, they must be added and then the wage bill must be determined. The wage sum must be related to the year in which the EAS is applied. For the year 2018 this will be the 2018 wage bill. Since you do not yet know this wage bill, you may base this on the 2017 wage bill. In that case, please do allow for any changes you are aware of or anticipate, such as a reorganization, redundancies or expansion of a department. Does your business comprise several employers, e.g. because it has several limited companies? In that case the expenses for staff must be determined for each employer separately and must be separately compared to that employer's wage bill, unless you have opted for the application of the group scheme (further details in Ch. 4).

3 Free space

The free space (also called the flat-rate space or expense-allowance lump sum) used to make untaxed allowances and to provide benefits in kind to employees amounts to 1.2% of the total taxable wage bill (column 14 of the payroll record).
Please do note: although wages from a former employment (such as severance pay and pension payments) are part of the taxable wages, they are NOT part of the 1.2% base of the total taxable wage bill (column 14 of the wage bill).

In the case this (total) free space is exceeded, you, the employer, will be due a final levy of 80% on the excess amount.

The cost types assigned by the employer to the free space must be determined. These assigned allowances and benefits in kind are untaxed wages for the employee. If the total of the assigned allowances and benefits in kind for the entire staff exceed 1.2% of the taxable wage bill, the excess amount is taxed as wages from the employee or from you, the employer, with an 80% final levy from the employer. The assigned allowances and benefits in kind do not constitute wages for the national insurances and employees' insurances and you need not pay any income-related health-insurance Act contribution.

You must assign (i.e. let employees know) the allowances and benefits in kind that are to be part of the free space beforehand. This choice must be made no later than at the (benefiting) moment of payment of the allowance or providing the wages in kind. If and to the extent no assignment is made beforehand, allowances and benefits in kind shall simply be considered individually taxable wages. It is not possible to include any allowances and benefits in kind in the free space with retroactive effect.
Please note that also specific exemptions and zero valuations will only be exempt if they have been assigned as work-related expenses by the employer.

The free space applies to each calendar year. Any remainder cannot be carried forward to a next calendar year.

In case any free space is left, you may consider to assign the net part of a taxed gross allowance either partly or wholly as work-related cost within the free space.

Example:

	Employee	**Employer**
Usual (gross) 13th month	€ 2,000	
Cost for employer (including 15% employer's contribution)		€ 2,300
Wage tax/national ins. contributions withholding (42%)	€ 840	
Net wages	€ 1,160	

13th month as work-related cost

	Employee	Employer
13th month	€ 1,160	
Cost for employer		€ 1,160

The employer saves € 1,140 (€ 2,300 -/- € 1,160) on cost per employee.

You may opt to have the tax benefit to be entirely to your advantage, or to have it (partly) passed on to the employee in the form of a higher net work-related cost allowance (in the example: a higher 13th month).
Please note: this is only possible if the customary test / customary criterion has been fulfilled (see Ch. 3.1).

3.1 The customary test

Please note: The expense allowance scheme provides much freedom and only has one restriction: the '**customary test**'.
This means that the allowances and benefits in kind assigned by you must not deviate more than 30% from what is considered common usage in similar situations. The amount exceeding the 30% limit, is the employee's wage. For example, a Christmas hamper of € 25,000 or a kilometre allowance of € 5 is not customary.

Example
Each year, you supply to your employees a € 6,000 taxed bonus. These employees will receive approximately a net amount of € 3,000. This year, you will give your employees the same bonus, however untaxed. Your employees will now receive a net amount of € 6,000. You can therefore not assign the bonus as a final-levy wage because this is not common usage.

The customary test is meant for special situations. The Tax Authorities assume that an allowance or a benefit in kind of € 2,400 maximum per person per year (which is called the effectiveness margin) is at any rate common usage.

Relevant aspects in the customary test include:

- the type of allowances and benefits in kind and their value;
- the amount of the allowances and benefits in kind;
- who will receive the allowances and benefits in kind.

The assessment as to whether or not an allowance is common usage takes place afterwards and on an employee level. This gives the inspector the possibility of tackling extreme situations, such as unusual comprehensive turnovers of taxed wages in an untaxed allowance. Having said that, the inspector is the one who must prove that certain allowances and benefits in kind are not customary.

When an allowance or benefit in kind is **not customary**, it cannot be assigned as a final-levy component and the allowance shall be part of the employee's **individual taxable wages**.

The court of Noord-Holland[1] issued a decision on 14th September 2016 with regard to the customary criterion. The question in these proceedings was whether the shares provided for free by the employer could be assigned as a final-levy component as referred to in article 31, section one, intro and under f of the wage tax Act. The court of Noord-Holland assessed that the mere fact that the case was related to benefits in kind of a 'considerable' value, is insufficient for the conclusion that the benefits in kind could not be included in the expense allowance scheme. It must be determined what is comm. on usage in corresponding situations in order to be able to assess whether the case deviates from such situations to a considerable extent (30%).
The court believes that the Tax Authorities have not in any way been able to explain what this situation was compared to. The Tax Authorities' claim that for the assessment of the customary aspect a possible rate benefit was a factor, did not result in the fact that the Tax Authorities have furnished the required proof. At the moment this decision was published it was not yet known whether the Tax Authorities will appeal to this decision.

From 1st January 2016, the customary test reads as follows (article 31, section one, part f of the wage tax Act):

[1] Court of Noord-Nederland, 14th September 2016, case numbers: HAA 14/2600 and HAA 15/2207, ECLI:NL:RBNHO:2016:7583

Final-levy components are *'when the situation is related to current employment: allowances and benefits in kind assigned by the withholding agent, including parts of allowances and benefits in kind, to the extent the scope of the assigned allowances and benefits in kind do not predominantly exceed the scope of the allowances and benefits in kind usually assigned in otherwise corresponding situations'.*

This has tightened up the customary criterion in order to limit the possibilities of rate arbitration.

What changes have become effective from 1st January 2016 in respect of the customary criterion up to and including 2015?

- It has been made clear that the **assignment** of a certain allowance or benefit in kind of a certain scope must be common usage (the law text up to and including 2015 is ambiguous in that the scope of the allowance or the benefit in kind as such should be common usage).
- The scope of the assigned allowance and benefits in kind must not predominantly (i.e. 30% or more) exceed the scope of the allowances and benefits in kind that are usually assigned. This crux of this is that it must be common usage that an employer bears any levies due on the allowance or benefit in kind through the final levy. The explanatory statement notes that it will not be customary to assign an allowance or benefit in kind, which in itself is non-customary, as a final-levy component.

The explanatory statement mentions a number of aspects that will be a factor in the test as to whether the customary criterion from 2016 is being fulfilled:

1. *The type of allowance or benefit in kind*
   It is not customary to assign a monthly wage, holiday allowance, high bonuses or allowance for financial loss at commencement of employment as a final-levy component.
   A low bonus may, however be customary in certain situations, e.g. a small gratuity for an employee who provided an extra performance[2]. Costs incurred by an employee for the proper performance of his job will sooner be assigned as customary as a final-levy component than mere remuneration components. On the other hand, a Christmas hamper will generally be a customary item to be assigned as final-levy component (subject to its value).
2. *The amount of the allowance or value of the benefit in kind*
   Not only the amount of the allowance or benefit in kind in itself[3], yet also the amount of all the assigned allowances and benefits in kind together in one year are included in the assessment.
3. *Is the rate arbitration the objective for the assignment as final-levy component?*
   A stable course of action from the past can be considered. If an employer used to bear the levy of frequent allowances or benefits in kind through an individual gross-up in the past (before the expense allowance scheme), it is plausible that rate arbitration is not a factor in the assignment as a final-levy component. This may be different for incidental or comprehensive remunerations where the final-levy rate is considerably less than the rate in the individual gross-up.
4. *The comparison to other employees*
   This concerns:
   a. a comparison to other employees at the same employer;
   b. a comparison to other employees in the same job category, and/or;
   c. a comparison to other employees at other employers;
   d. if no comparison to other employers is possible because the employer is unique and cannot be compared to other employers, **fairness** shall be a factor instead of a comparison to other employers[4].

The memorandum following the report[5] mentions that the tightening of the customary criterion has **no** implications for the effectiveness limit of € 2,400 per employee per year mentioned in the 2017 Wage Tax and National Insurance Contributions Handbook. The written answers from the Legislative Consultation mentions that the amount of € 2,400 per employee is adopted in the Wage Tax and National Insurance Contributions Handbook and that with respect to this, the employer has certainty beforehand without having to consult the inspector.
It is possible to obtain certainty with regard to allowances exceeding € 2,400, however, consultation with the inspector will be required[6].

[2] Memorandum following the report: Other Tax Measures in 2016, pages 58/59

[3] Although the assignment of an anniversary bonus may be customary, it no longer is when the anniversary bonus amounts to € 1 million.

[4] Memorandum following the report: Other Tax Measures in 2016, pages 59/60

[5] Memorandum following the 2016 Other Tax Measures report, 34 305, page 40

[6] Written answers Act on cross-bordering work, 29th October 2015, AFP/2015/925, page 43/44

3.2 Volunteers

A special arrangement applies to volunteers based on the notion that in case a volunteer only receives allowances and benefits in kind to a joint value of no more than € 150 per month to a maximum of € 1,500 per annum, such volunteer is deemed not to be in employment.
A condition for the application of this scheme is that the volunteer does not professionally perform work for a public benefit organization, a sports organization or a body that is not qualified as such and is not subject to company tax or has been exempted from company tax.

The EAS does not change this. The volunteer allowance of no more than € 150 per month to a maximum of € 1,500 per annum does not constitute a wage because of this fiction and therefore is not included in the determination of the wage bill on which the free space is calculated. The allowances and benefits in kind to the volunteers who stay within the confines of the volunteer scheme therefore do not need to be assigned as a final-levy component and can as such not claim the free space. No exceptions have been made for the determination of the total of allowances and benefits in kind. This means that the value of Christmas hamper or a business trip is included in the maximum amounts of the volunteer scheme. The EAS does not provide any changes with respect to this aspect either (memorandum following the report: 2015 Tax Plan, pages 61 and 62).

The volunteer scheme does not apply to the voluntary fire brigade; they have been appointed as officials pursuant to a statutory provision and are therefore regarded as being in employment taxwise. Arrangements have been made with the Tax Authorities about the amount of the untaxed expense allowance (written answers from Legislative Consultation, 30th October 2014, AFP/2014/982, page 7).

4 The Group Scheme

The EAS must be applied for each withholding agent. From 1st January 2015 it has been possible to apply the EAS on a group level (art. 32, 1964 Wage Tax Act).

With the application of the group scheme, a collective space is being developed, since all participating withholding agents are considered as one single withholding agent.

This makes it possible to compensate the amount exceeded in the free space for one of the group companies by the free space that another group company still has left.
The group company with the largest wage bill for tax purposes will have to declare and pay the 80% final levy where due. This must be done no later than during the first wage period of the subsequent calendar year.
All the withholding agents involved in the group scheme are, however, liable for the entire final levy due by the group.

Each year a group has a choice to whether or not apply the group scheme. This can be done through the tax declaration on the first period of the subsequent calendar year.
This means that when all the group companies make a monthly tax return, it must be decided no later than in January whether the scheme is to be applied jointly.

In order to apply the EAS on a group level, the following conditions must be met (art. 32, section two, 1964 Wage Tax Act):

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- the withholding agent has an interest in another withholding agent for at least 95% (legally and economically);
- the other withholding agent has an interest in the withholding agent for at least 95%;
- a third party has at least a 95% interest in the withholding agent, while such third party has at least a 95% interest in such other withholding agent.

Interest in this respect means the legal and economic shareholding structure. The nominal paid-up share capital is therefore followed and so this is not reviewed against for example any allocation of voting rights (memorandum following the 2015 Tax Plan report, page 67).

Also an at least 95% indirect shareholding is qualified as a group and so the group scheme can be applied. This is for example the case for a parent company with staff, which comprises a 100% intermediate holding with no staff, which comprises 100% subsidiaries.[7]

[7] See question 8 of the frequently asked questions and answers of the 2014 EAS intermediate days.

Please note that for the application of the EAS on a group level, all group elements must meet the 95% ownership requirement throughout the entire calendar year. This means that incoming and outgoing companies cannot use this option during the calendar year.
If you apply the group scheme, the scheme will apply to all the group elements that constitute a group throughout the entire calendar year.

Foundations which are interrelated on an economic, legal and organisational level to such extent that they form a unit, may use the group scheme (art. 32, section two, 1964 Wage Tax Act).
An interrelationship in a financial, organisational and economic respect exists among withholding foundations if it has been set down in the foundation's articles that (article 8.4b, section two of the 2011 wage tax implementing Act):

- the board of the participating foundations may make a binding recommendation for the appointment of the board of another foundation, and;
- the assets of a participating foundation is transferred to another participating foundation in the case it is liquidated or goes bankrupt.

A group is not determined through a decision that is subject to objection. In the case of doubt, however, a group may consult with the Tax Authorities. The Tax Authorities may give a definite answer on the group elements that meet the conditions to participate.

With respect to the application of the group scheme, you must record the following particulars in your administration for each participant (art. 8.4b, 2011 Wage tax Act implementing scheme):

- the name and the number of the wage tax and national insurance contributions;
- the total taxable wages paid to the employees, on which tax has been levied from such employees;
- an outline of all the allowances and benefits in kind with regard to which the participant uses the free space;
- a calculation of the payable wage tax on a group level and the name;
- number for the wage tax and national insurance contributions of the employee who declares and pays tax;
- an outline of the allowances and benefits in kind assigned by such withholding agent under the terms of the EAS as a final-levy component and with regard to which no specific exemption is applicable.

5 Exceptions not included in the free space of the expense allowance scheme:

Compulsory **Individual/final-levy wage** Certain allowances and benefits in kind have been assigned as a compulsory individual wage of the employee, for which the employee pays the tax due by himself. The wage for which you bear the tax levy based on a specific 'final-levy wage' scheme is also part of this.	**Examples** • Compulsory individual wage • The benefit of a (service) flat • Financial fines (domestic, and also foreign from 2016) • Private use of the company car • Traffic fines[8] • Interest benefit of Staff loan for their own house (from 1-1-2016) **Final-levy wage** • The final levy of € 300 (2018) for the private use in the case of continuously alternating used delivery vans	**Please note** Under EAS, the number of possibilities to apply the final-levy wage is limited. This is only possible in any of the following cases: • Final levy for benefits in kind to persons other than your employees • Final levy on account of temporary issues (as the tax authorities cannot in fairness expect you to timely submit a tax assessment) • Final levy on account of an assigned payment under public law • Pseudo final levy on account of the early pension scheme, excessive severance pay or back service of a pension • Final levy goods and services for promotional purposes and benefits from savings systems • Pseudo final levy for high wage
Intermediate cost Cost related to the staff, which are actually cost that are part of your company. (advanced cost) This situation occurs with regard to: • the purchase cost of benefits in kind that have started to be part of the employer's assets, • cost incurred for benefits in kind that are part of the employer's assets (and that have been provided tot he employee), • cost that are specifically related to the business operation (and not to the employee's performance).	**Examples** • an employee who buys benefits in kind for the company and advances the cost, which he is subsequently reimbursed for. • Cost of business dinner • Cost related to the company car (including parking fee, toll roads and carwash).	**Please note** The law does not always clearly indicate what is included in this category. If you have any cost allowances or benefits in kind and you are not sure whether they are included in the intermediate cost, then please consult your tax inspector.
Not resulting from employment Allowances and benefits in kind not resulting from employment, however from courtesy, sympathy, piety or a personal token.	**Examples** • Funeral wreath • Fruit basket in case of illness • Small gifts to an invoice value of € 25 (incl. VAT).	**Please note** An additional requirement for small gifts is that the gift is not money or a voucher and is presented in a situation in which also others present a similar gift at a 25 and/or 40-year anniversary.

[8] In the Wage Tax and National Insurance Contributions Handbook (January 2017) the scheme (art. 31, section four, part c Wage Tax Act) is explained as follows. Employee's wages are at all times allowances received by the employee for a fine imposed on the employee. If an employer receives a fine for an offence by the employee and the employer does not recover the fine from the employee, then the benefit for the employee can be assigned as a final-levy wage at the expense of the free space, provided that the customary test has been fulfilled.

Exempt wage Exempt wage is not included in the EAS	**Examples** • Single payment at death, etc. • Anniversary payments etc. • (Pre-)Pension schemes • Entitlement to ZW/WAZO/ WW/ WAO/WIA [benefits by virtue of health-care, disability and unemployment legislation]	
Specific exemptions With respect to a limited number of benefits in kind it has been explicitly decided that they may be reimbursed or provided tax-free, as any form of a remuneration element or benefit is missing. These benefits in kind are explicitly mentioned in the law.	**Examples** • Costs of business relocation • Actual costs for business travels by public transport (subscriptions and separate tickets), taxi, air ticket, etc. • Allowances for business travels by own transport (€ 0.19 per kilometre max - 2018) • Temporary costs of accommodation for job purposes (meals and staying over during business trips) • Courses, study, conferences, seminars, symposiums, excursions, study trips, professional journals etc. for a proper performance of the job • Outplacement • Costs of a study programme for company or profession (registration with professional register and procedures for the acknowledgement of acquired competences (AAC procedures) • Business meals • ET costs (double costs of housing due to temporary stay outside the country of origin) and the 30% evidence rule • Health and safety provisions directly resulting from the working-conditions policy conducted by the employer • Provided equipment • Staff discounts • Tools/computers/means of communication (see Ch. 7)	**Please note** Besides the above examples, there are no possibilities for other specific exemptions based on the current EAS. Example: monitor goggles, special insulating clothes and protective clothes, chair massage etc.). Provided also used at workplace and the business use is 90% or more. No more than: • 20% of the economic value • € 500 per calendar year per employee. Provided the necessity criterion is met (Ch.7)

Zero valuation	Examples	Please note
Benefits in kind that actually come under the free space, however, since they are valued at nil, when they are entirely or partly used or consumed at the workplace.	• Provisions at the workplace for which it is not customary that they are used elsewhere, such as the benefit of the workplace equipment (i.e. not the workplace at own home) in the broadest sense of the standard computer, copier and landline telephone), the parking place at the employer's site). • Consumptions, in fairness, at the workplace, which are not part of the meal (coffee, tea, snacks) • Provided work clothes, if such clothes is only or practically only (90%) used to be worn during the performance of the job (uniforms and all-weather coat in construction work) or has a log (70cm2) or work clothes that stays at the workplace. • Provided public-transport card and off-peak hours card (if your employee also uses this card for business purposes) • Interest benefit from staff loans related to the purchase of a bike, electric bike or electric moped	The possibilities mentioned in the law have been stated above. This list may, however, be extended. If you have any doubts that any cost allowances or benefits in kind are included in the zero valuation, please consult with your tax inspector.

6 The workplace

The workplace has become an essential criterion within the EAS. For this reason, a distinction must basically be made between allowances and benefits in kind used or consumed AT the workplace and OUTSIDE the workplace. If at the workplace, then they are exempt (through a zero valuation, see Ch. 5). Near and away from the workplace is taxed. It is therefore vital to acknowledge the definition of a workplace.
A workplace is any place used in relation to the performance of work and for which the employer is responsible under the Working Conditions Act. A workplace does not mean a workplace at home. This situation is only different in case for example a separate entrance with sanitary facilities is available (the accommodation must be an independent part of the house), in which the employee works and with regard to which a business tenancy contract must have been effected between the employee and the employer, which means that only the employer has control of the accommodation.

The following note is made in the explanation on the implementing scheme (2011 wage tax implementing scheme):
'The workplace is considered in a broad sense, which includes for example meeting rooms, company canteens and the carpark at the company site.

With respect to the specifically exempted health and safety facilities, a workplace may also include (article 8.4a, section two, 2011 Wage Tax Implementing Scheme):

- a work space at home in the situation of working from home as referred to in the Occupational Health and Safety Act;
- the location where the employer's health and safety policy is executed.

With the designation of a workplace at home, the regulations regarding the ergonomic organisation of the workplace, the monitor workplace and the daylight or artificial light may also be specifically exempt, paid for as an allowance or provided as a benefit in kind.

With the designation of the location where the employer's health and safety policy is executed as a workplace, also medical examinations and other medical actions (such as the service of a company doctor/physiotherapist) be included in the new specific exemption.

6.1 Workplace-related fitness

Workplace-related fitness is specifically exempt irrespective of whether the fitness takes place at the workplace or elsewhere. The workplace-related fitness includes for example fitness in order to stay fit, which is a requirement for the performance of the work itself. More generally, if the employer anticipates risks for his employees' health, which he wants to remove with a specific fitness programme in his health and safety policy plan, then such fitness programme is exempt[9].

A zero valuation applies to fitness at the workplace (to the extent it is not workplace related).
Fitness outside the workplace is taxed to the extent it comprises non-workplace related fitness. The free space can be used for such fitness.

Please do note! It is no longer simply possible to provide to employees a sport-school subscription of their choice under the specific exemption, not even if this option is adopted in the health and safety plan.

A fitness facility outside the workplace is only specific exempt if in fairness it is a health and safety facility. The questions and answers on the Tax Authorities' website show that this is the case when the employer anticipates risks in the working conditions for the employees' health and he wants to prevent or remove such risks through a specific fitness programme. Some general fitness will not suffice.

The employees must participate in a specific health and safety fitness programme that is related to the special risks or requirements of the job. This is not without obligation for the employee: the employee must participate in the health and safety fitness programme. The Tax Authorities state that in order to use the exemption, the employer must fully bear the cost of the health and safety facility and therefore not ask any contribution from the employee.

6.2 Parking at the workplace and elsewhere

First of all, a distinction must be made between the employee travelling by his own means of transport (see 6.2.1) and an employee who travels by the company car / lease car (see Ch. 6.2.2).

6.2.1 Parking at/by the workplace using an own means of transport

If the employee parks at a parking place or garage at/near the employer's business site, then such parking facility is untaxed (zero valuation), as the parking facility is part of the workplace (see Ch. 6).
If the employee uses a parking place in the vicinity of the workplace, this will in principle result in a taxed wage component. This situation is only different if the employer bears (health and safety) responsibility for such parking place. This means that you, the employer, can be successfully held liable by the employee if for example the employee's car has been damaged due to your negligence. In that case, the parking facility can be provided to the employee untaxed.

6.2.1.1 Parking at locations other than the workplace

The employer bears no (health and safety) responsibility with regard to parking places and car parks used by employees. The allowance for or providing a parking facility for work, e.g. through a parking card for parking at a client applies in such case as an employee's wage to the extent such wage together with a kilometre allowance from you (or a fixed amount) exceeds € 0.19 per kilometre.
The legislator assumes that, with respect to employees with an own car, all the costs are included in the specific exemption payment of € 0.19 per kilometre. The employer may opt to bear the wage tax on this amount and to assign the parking cost as a final-levy wage. The parking facilities must be valued at the economic value or the invoice value.

6.2.1.2 Parking at the employee's home

The allowance for or providing a parking facility in or at the employee's home is taxed wage for the employee, unless the employer opts for denoting such wage component as a final-levy wage.

6.2.2 Parking at/near the workplace using the company car

The zero valuation applies to parking at the workplace using the company car (lease car). Any other paid parking cost may be reimbursed by the employer untaxed (as intermediate costs). The reason for this is that it is presumed that such costs are included in the fixed valuation rules for the private use of the car.

6.2.2.1 Parking permit/garage

If the employee has a parking permit or a garage in his name for a parking facility at his home, which can *also be used for other means of transport*, then the reimbursement of the cost of the parking permit or garage, or the provision of such parking permit or garage shall be (taxed) wage for the employee.

[9] written answers Legislation Consultation, 30th October 2014, AFP/2014/982, page 7

The employer may opt to denote such wage component as final-levy wage.
If the parking permit on a registration number or the garage is only for the purpose of the company car, the employer may reimburse the allowance or provision of the permit or garage tax-free to the employee. The costs shall in that case be denoted as intermediate costs.

Practice frequently shows that the employee tends to park his company car in the garage of his home. In some cases, the situation may then be related to a real (business) rental. This will for example be the case if the employee uses the garage only for the company car. The employer may in such situation pay the employee an untaxed allowance for the use of the garage in the form of rent. However, if the garage is partly used by the employee, for example because the employee uses part of the garage for storage, then there is no real rental situation. If, in that case, the employer pays an allowance for the use of the garage to the employee, this will be denoted as a wage for the employee. The employer may opt for denoting such wage component as a final-levy wage.

7 The necessity criterion

From 1st January 2015, the state secretary for finance, Mr Wiebes, introduced a new specific exemption through the introduction of the (limited) necessity criterion. The underlying idea of this criterion is that all matters required to perform the employment must be reimbursed or provided untaxed. An advantage is that the necessity criterion involves a certain flexibility and links up well with the current practice of fast technological developments in IT.

The necessity criterion only applies to:

- tools;
- computers, mobile means of communication and similar equipment including the respective data transport software etc.

Tools include objects required for the performance of a task. A tool is used to create, measure or check something and may be used more than once by its nature.
Computers, mobile means of communication and similar equipment include ICT equipment such as a desktop, a notebook, a tablet or mobile phone (also a smartphone). Also printers, organisers and navigation equipment are included (memorandum following the 2015 tax plan report, page 64).

This does not only include the reimbursement of or providing tools or ICT equipment, however, also directly related allowances and provisions. This may include data transport such as a dongle or a subscription through a 4G card and the required software etc. used under the terms of employment.

Software that is not required for a proper performance of the job is not included in the necessity criterion, however, must be assigned as a final-levy component in the free space or individually taxed by the employee.

The necessity criterion is an open standard. Such open standard presumes that anything you, the employer, considers necessary under the terms of your business operation with regard to facilities (the fairness test), can be provided to the employee without allowing for the employee's private benefit from a tax perspective.

In order to be able to apply the necessity criterion, you must for each employee or group of employees performing similar work, account for why you consider a certain facility necessary for such group of employees. The following criteria apply:

1. the facility must actually and effectively be used;
2. used for the proper performance of the job;
3. no considerable private advantage;
4. no (gross) own contribution from employee(s)*;
5. obligatory return of the facility/allowance of the residual value if the necessity criterion is no longer fulfilled (e.g. in the case of a change of jobs/redundancy);
6. if the employee is also a director or commissioner, an additional requirement applies: the customary requirement.

*It is highly relevant to acknowledge that within the necessity criterion the exchange of gross wage components (such as the application of a cafeteria arrangement) is no longer possible. If the employer requires an own contribution from the employee derived from his gross wage, the situation is (apparently) no longer related to a necessary facility and the entire allowance/benefit in kind is a taxed wage.

The assessment of necessity is initially left up to the employer, even though his assessment will be objectified through a fairness test. Should the inspector have valid doubts about the business considerations in an allowance or a benefit in kind by the employer, then it is up to the inspector to make it plausible that the facility has been provided to the employee with the aim of preferential treatment/remuneration.
This is not the case if the employee is also a director or commissioner of the body for which he performs work. In that case, the necessity criterion does not apply, unless the employer makes it plausible that the facility is a customary facility for the proper fulfilment of the job of the respective employee. The common usage of the facility is an increase in the burden of proof for the directors and commissioners.

Resources
Resources that can also be used at locations other than at the workplace, which are not tools, computers, mobile means of communication etc., will come under the new specific exemption of workplace-related facilities on the condition that:

- these are used or consumed entirely or partly at the workplace;
- these are used for business purposes entirely or practically entirely (90%).

Tools, computers, mobile means of communication etc. that are not exempt pursuant to the necessity criterion as they are for example no longer necessary, may, however, also be included in the new specific exemption of workplace-related facilities. A condition is that they are used or consumed entirely or partly at the workplace and that they are entirely or practically entirely used for business purposes (explanatory note by article in the draft 2011 wage-tax implementing scheme part B).

Internet at home
As a workplace at home is not acknowledged from a tax perspective (see Ch. 6), the internet allowance cannot come under the exemption for facilities at the workplace.
The necessity criterion applies to benefits in kind such as computers and similar equipment including the respective data transport and the software required for the use for the purpose of the job. Internet is to be included in data transport. The state secretary replied to parliament questions that the necessity criterion also applies to internet at home. If this is without question required for the performance of the job, the internet allowance can be paid untaxed. This, however, does not apply to the television and telephone part of an all-in-1-package. Landline telephone subscriptions cannot be reimbursed under the necessity criterion as the necessity criterion only applies to mobile means of communication. Such packages will therefore have to be split into internet, telephone and TV.

8 Valuation of benefits in kind (Wages in kind)

The main rule is that wages in kind are valued at the amount of the purchase invoice inclusive of VAT.

Records are basically entered exclusive of VAT in the financial administration of employers who execute VAT-taxed performances. VAT is, however, relevant to the EAS, since a wage is all that is being received inclusive of VAT. The VAT must be visible for the EAS with regard to the cost that are included in the free space as work-related expenses. This is an administrative challenge. In his letter of 3rd July 2014 (DB2014/272), state secretary Mr Wiebes mentioned that with regard to the calculation of the VAT amount, the employer may make the arrangement with the inspector that he will allow for the average VAT burden on the various facilities from the free space.
If there is no invoice, or the invoice comes from an affiliated company, the work-related expenses are valued at the *economic value*.

Exceptions to the main rule are:
- zero valuations;
- valuation of products from own company;
- fixed valuations.

A limited number of listed benefits in kind is valued at zero (see Ch. 5). These are facilities at the employee's workplace. In general, a workplace is a workplace under the EAS when the employer is responsible for such workplace's health and safety. See chapter 6 for a detailed explanation of the workplace criterion.

The legislator has valued some of the benefits in kind at standard amounts. A standard amount applies to the following facilities, which are used or consumed at the workplace:
-
- meals € 3.35 (2018) per meal;

- housing and lodging (other than the house provided for the proper fulfilment of the job) including the receipt of utilities, water and laundry: € 5.55 (2018) per day (e.g. a farm hand who lives at his employer's home);
- child care provided by the employer, with regard to which a claim may be created to a child-care allowance or an allowance pursuant to the child-care Act and the playroom quality standards: the number of hours of child care multiplied by the hourly rate set down by virtue of article 1.7, section two, child-care Act and playroom quality standards;
- for the provision of a company flat for the proper fulfilment of the job, such as a porter's lodge. This is valued at 18% of the employee's pay-roll tax, based on an employment of at least 36 hours per week.

8.1 Meals

The fixed valuation (€ 3.35; 2018) of meals at the workplace is an allowance from the legislator in order to avoid any discussions regarding the determination of the value of a meal.
If it can be demonstrated that the invoice value (when a third non-affiliated company has charged an amount), or the economic value (in other cases) is lower than the fixed amount, such lower amount can be linked up with.
Please note that the tax authorities will adopt the view that each meal will at all times be based on the standard amount, irrespective of the actual cost of the meal.

This means that € 3.35 must be included in the employee's wages for each meal and for each employee.
This is reduced by any own contribution of the employee.
The employer may opt for denoting this wage component as a final-levy wage and put the amount at the expense of the free space.

The employer must in that case, however, make the number of times employees use meals plausible. The question and answer publication from the tax authorities' website states that arrangements may be made with the tax authorities with respect to this.

8.1.1 What is a meal?

The tax authorities mentioned during the webinar that the concept of meal is not further defined. A cup of soup and a few sandwiches and a cup of milk is denoted as a meal by the tax authorities. Just a snack or a cup of soup and a cup of milk do not qualify as a meal.
A zero valuation applies to any consumption at the workplace, which is not a meal.

8.1.2 Meal that is more than a subordinate business aspect

A meal that is more than a subordinate business aspect is specific exempt. A lunch with only employees is generally not more than a subordinate business aspect. It won't make it a business benefit in kind if the employees only discuss work (e.g. professional consultation).
If the meeting is clearly for business purposes, then the meal is more than a subordinate business aspect. An allowance or provision of the meal will in that case be untaxed.

A meal that is more than a subordinate business aspect furthermore includes:
- either or not expected overtime work or work during shopping nights
- therapeutic participation in meal times (day-care centres)
- work on-board aircraft, ships, oil rigs or fun-fair caravans

If an employee is unable to eat at home between 17:00 and 20:00 hrs due to work, the meal can definitely be qualified as being of a more than subordinate business nature.

8.1.3 Meals as part of temporary accommodation expenses

Meals as part of temporary accommodation expenses are untaxed. Such a meal is related to:
- business trips;
- travelling by mobile and itinerant employees such as representatives and accountants;
- business consultations with clients outside the regular workplace;
- work at non-permanent locations, such as work performed by road construction workers, construction workers and film-crew staff.

8.2 Staff discount for industry-specific products

Products from the own company (industry-specific products) are valued at the price charged to third parties.
If you give your employee a discount or reimbursement at the purchase of products from the own company, then the product is exempt on the following conditions:

- the products are not alien to the industry;
- the discount or reimbursement per product amounts to a maximum of 20% of the economic value of the product;
- the discounts or reimbursements amount to not more than € 500 in 2018;
- discount or reimbursements for products from the own company are also exempt if the employment has ended due to retirement or industrial disability.

With respect to discounts or reimbursements higher than the maximums mentioned above, the exemption applies up to these maximums and the excess amounts can be included in the free space.

8.3 Interest benefit of a staff loan for own home as of 1-1-2016

The interest benefit of a loan extended to the employee for his own home has been qualified as a compulsory individual wage from the employer from 1st January 2016. This interest benefit can no longer be qualified as a final-level component in the free space from that date, however, must be individually taxed from the employee (article 31, section four, part h of the wage-tax Act).
The employee may qualify this taxed interest benefit as an interest of an own-home loan on the condition that the interest of the loan can be considered a deductible cost within the meaning of article 3.120 to 3.123 of the 2001 Income Tax Act.
With respect to former employees, for whom the interest benefit continues after they have left employment, the employer has since 1st January 2016 become a withholding agent for such employees (or continues to be a withholding agent at termination of employment after 1st January 2016). The wage tax to be withheld will have to be recovered from the former employee by the employer (as there is no wage from which it can be withheld).

In case the interest benefit varies during the year (e.g. for annuity loans or loans with a variable interest), a reasonable estimated amount may be taken as a basis during the year, and subsequently, the remainder of the benefit calculated on an annual basis must be taken into account in the last wage period[10].

The interest benefit is determined pursuant to article 13 of the wage-tax Act. This means that the economic value must be taken as a basis. In case of industry-specific products (e.g. for employees of a bank organisation), the value to be charged to a third party in similar circumstances will be applicable. The interest benefit is subsequently the difference between the interest agreed between the employer and the employee and the economic value (or for industry-specific products, the interest to be charged to a third party).

A zero valuation continues to be applicable, also in 2016, to the interest benefit of a staff loan for a bicycle, an electric bike or electric scooter (article 13, section five, wage-tax Act).

[10] Letter of 21st September 2015, AFP2015/820U regarding the 2015 Tax Collective Act, page 5 and draft of local regulations on interest benefits for staff loan

9 Fixed cost and expense allowances

Under the EAS it is furthermore possible to pay a fixed cost/expense allowance, provided it is based on evidence. The allowance must be split as follows:

- work costs at the expense of the free space of 1.2% such as internal business entertaining, internet at home;
- specific exemption such as small refreshments on the way, lunch costs and professional journals;
- intermediate costs such as costs of the company car, lunch costs with business relations, external business entertaining.

Specific exemptions and intermediate costs can only be part of a fixed expense allowance if the following conditions have been met:

- The amount of the exemptions and the costs can be made plausible;
- A description of each exemption and cost benefits in kind is stated with an estimated amount;
- A specification is stated of the structure of the fixed cost allowances for each exemption and for each cost benefit in kind;
- The fixed expense allowance is based on an examination beforehand into the cost actually incurred. This examination can be repeated at the request of the tax authorities or if circumstances change.

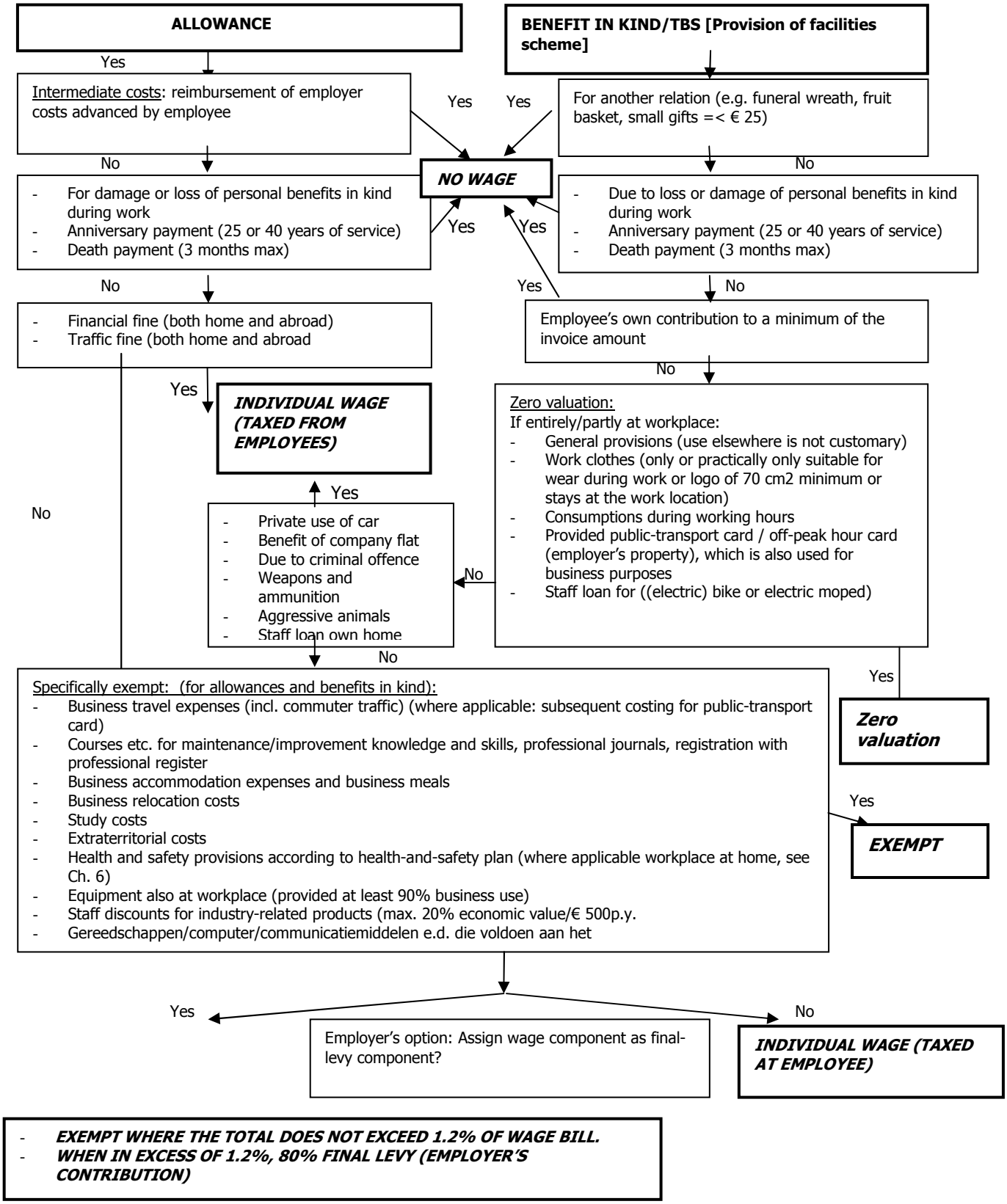
An examination beforehand will only be required if it relates to fixed expense allowances. Fixed expense allowances that existed before the EAS was applied need not be re-examined as long as the circumstances have not changed. You will obviously need to periodically conduct a random test (of 3 months minimum) among your employees in order to establish the amount of the fixed expenses to be reimbursed.

Common components for the fixed expense allowance include:

- Cost of company car --> intermediate costs
- External business entertaining costs --> intermediate costs
- Interne business entertaining costs --> taxed wages/work-related costs
- Refreshments on the way --> specific exemption
- Professional journals --> specific exemption
- Office expenses at home --> taxed wages/work-related costs

Fixed expense allowances for specific exemptions and intermediate costs that do not fulfil the above conditions, are denoted as a taxed wage for the employee. It is possible, though, to assign these to the free space.

10 Diagram Outline



11 Implementation of the expense-allowance scheme

The application of the expense-allowance scheme is compulsory from 1st January 2015.
By taking stock of the current terms of employment it must be assessed whether and how your set of terms of employment fits in with the fixed 1.2% (2017) of the taxable wage bill. Each employer will want to avoid the situation as much as possible that 80% final levy must be paid, which cannot be recovered from the employee. In other words: it will be useful to draw up an analysis of the (possibilities of the) EAS, made up of the following steps:

1. Stock-taking
2. Categorisation
3. Determination of the free space
4. Final assessment

11.1 Step 1: Stock-taking

This step is used to asses what sources of work-related costs your organisation has.
Make sure to take stock of at least the following matters:

1. What effective allowances are paid and benefits in kind are provided within the company? Sources you may use in order to take stock of all the factual allowances and benefits in kind include:
   a. financial administration;
   b. wages records;
   c. terms of employment (perhaps not all are used);
   d. other information resulting from conversations and assessments.
2. What standard cost allowances are paid to employees and what are they for (evidence)?
3. To the extent the current standard cost allowances are not based on a cost investigation, it may be useful to conduct an investigation (as yet). This is relevant as the Tax Authorities will continue to verify, also under the EAS, that the standard cost allowances have been specified according to their type and assumed scope. For a cost investigation, a representative group of employees must keep the cost for a representative period (for example not during the summer holidays) and for at least three months.
4. Which employees (jobs) are paid a cost allowance?
5. What is the ratio between the amount of the paid cost allowance and the actual cost level that reasonably fits in with the respective work (where possible for each job group)?
6. What (type of) costs can reasonably be incurred for the purpose of the job?

11.2 Step 2: Categorisation

The next step is the categorisation of the allowances and benefits in kind according to the following classification:

1. Allowances and benefits in kind that do not constitute a wage
Not everything the employee receives from you, the employer, is a wage. The decisive criterion is the relationship between the wage and the job, as found in the history of legislation and jurisprudence. The following are definitely not wages:

- allowances and benefits in kind that are entered with respect to another relation;
- intermediate costs;
- benefits in kind for which the employee pays an own contribution of at least the (invoice) value.

2. Exempt wage
Exempt wage is not taxed and therefore does not affect the EAS.

3. Specific exemptions
Tax is not due with regard to all allowances and benefits in kind. Certain allowances and benefits in kind are specifically exempt. See Ch. 5 for further details.

4. Allowances that constitute a compulsory individual wage
Certain allowances and benefits in kind cannot be assigned as a final-levy component and constitute a compulsory individual wage. See Ch. 5 for further details.

5. Other allowances that may be assigned as a final-levy component (that come under the fixed percentage of 1.2% *(2018)*)

Any further allowances and benefits in kind (that are not classified in the above four categories) may be assigned as a final-levy component. The condition is that the total scope of the assigned allowances and benefits in kind must not predominantly depart from common usage in otherwise corresponding circumstances (the customary test, see Ch. 3).

Benefits in kind are basically valued according to:

- their economic value, or
- in case an amount has been charged by a third party to the employer: the amount charged.

Some benefits in kind are valued at zero. These benefits in kind do not use the free space of 1.2% (2018) as the value is zero. We therefore have adopted this category individually. The benefits in kind that may be assigned as a final-levy component can therefore be classified in two categories:

a. *benefits in kind valued at zero*
   These are provisions that are entirely or partly used or consumed at the workplace. Please see Ch. 5 and 6 for further details.

b. other benefits in kind with a valuation above zero.

11.3 Step 3: Determination of the free space

The third step is the determination of the free space and the comparison to the allowances and benefits in kind assigned as a final-levy component:

- **Determine the wage bill in the year in which the EAS is applied.**
  For the year 2018, this will be the 2018 wage bill. As this wage bill is not yet available, it must be determined the best you can. However, please do allow for known changes. These may include reorganisations, redundancies or expansion of a department.

- **Calculate the free space**
  The percentage of the free EAS budget 2018 is 1.2. You may take 1.2% of the expected total taxable wage bill for 2018 as a basis.
  Please note: Wages from former employment (such as severance pay and pension payments) are part of the taxable wage, however, they are NOT part of the 1.2% basis, if you provide wages from former employment of more than a subordinate level (10%). If you stay within this 10% margin, wages from former employment are effectively included in the determination of the 1.2% basis.

Please note: if the company consists of several employers (e.g. because it has several limited companies), the expenses for staff must be determined for each employer individually and must be separately compared to the wage bill at the relevant employer, unless you opt for application of the group scheme (see Ch. 4).

Determine the allowances that have been assigned as a final-levy component and the allowances with a valuation above zero, which have been assigned as a final-levy component. If the balance is higher than the free space, then the excess amount is taxed at an 80% final levy.

11.4 Final levy. Assessment of the terms of employment

Following the information obtained from the previous steps, it can be decided how the EAS affects you and what further steps are to be made.

On the other hand it may be useful to assess the terms of employment and to review them where necessary, so that the EAS will not result in a considerable increase in costs in the longer term. This may include swapping terms of employment that come under the specific exemption, intermediate costs or zero valuation. It may also be advisable to include allowances and benefits in kind that are currently tax-exempt in the EAS as individual wages (cheaper than the 80% final levy), so that the employer must bear the cost of the wage levy. Allowances and benefits in kind that are tax-exempt under the current scheme, can be made part of the gross wages under the expense allowance scheme. The employee must in that case pay for the wage levy. Do note that higher gross wages may have consequences for the employee's insurance contributions that are to be paid by you. Higher gross wages may also have implications for the accumulation of pension and holiday allowance. On balance, the conversion of an allowance or benefit in kind into taxed wages may be expensive.

Please note
Be mindful of the fact that an employer is usually not allowed to unilaterally adjust the terms of employment. Some employers are bound by the CLA and must allow for the terms of employment in accordance with the CLA.

It will be advisable to check this for the pension in the pension scheme. You may alternatively take advice from your pension insurer. The CLA or your own holiday-allowance scheme will be the decisive factor with regard to the holiday allowance.

Employees' Council
You are basically allowed to make adjustments to the terms of employment if a CLA does not prevent you from doing so. Permission from the employee or employees' council is usually required. If you should fail to ask such permission, the employee may turn to the court in order to enforce maintenance of the term of employment that has been removed. In order to avoid any ambiguity, make sure to align these matters up with the employees' council or with your employees beforehand.

12 Administrative obligations

The financial administration must guarantee the correct and timely EAS management information in order to make sure that the correct and complete wage-levy declarations are being returned.

The following matters must be kept up to date in the financial records:

- All allowances and benefits in kind that have been assigned to the free space are adopted in the administration as final-levy wage. These details need not be recorded at employees' level.
- When an allowance or benefit in kind has not been assigned to the free space, however is treated as individual wage of the employee, then such allowance or benefit in kind must be recorded at employee's level in the employee's payroll record.
- A final-levy wage is a specific exemption, which must be entered in the records at employee's level. An excessive allowance occurs when any amount is paid or benefit in kind is provided in excess of the specific exemption amount. When this excessive allowance is assigned to the free space, it must be adopted in the administration as a final-levy wage. If this excessive allowance is qualified as an individual wage of the employee, it must be entered in the employee's payroll record at employee's level.
- Please do note! If any allowances and benefits in kind have been adopted in the administration exclusive of VAT, the VAT must be added (see Ch. 6). Records in the financial administration by employers who execute VAT-imposed performances are in principle exclusive of VAT. In his letter of 3rd July 2014 (DB2014/272), state secretary Mr Wiebes mentioned that for the calculation of the amount to be entered in the free space, the employer may make the arrangement with the inspector that he will allow for the average VAT burden of the various provisions in the free space. In that case, the VAT does not need to be recorded for each provision separately.

12.1 Organisation of the financial administration

You may have to adjust your ledger accounts in order to obtain a correct and complete registration of the EAS-relevant benefits in kind. The classification of the ledger-account schedule may, also depending on the type and scope of your organisation, be organised as follows:

Group 417 EAS Expenses

Group 4171 Taxed Work-Related Costs
417100 Christmas hampers
417101 Staff parties and travelling
417102 Benefits in kind provided by the staff association
417103 …

Group 4172 Zero valuations
417200 Consumptions at the workplace
417201 Cost of health and safety provisions
417202 qualifying industrial clothing
417203 …

Group 4173 Specific exemptions

417300 travel-expenses allowance within the fiscal standard
417301 Study costs
417302 Costs of accommodation for business purposes
417303 ….

Group 4174 Intermediate Costs

417400 Cost of the company car (inclusive of ferry and toll-road fees, parking fees etc.)
417401 Cost of business dinner
417402 ....

Group 4175 No Wage and No Work-Related Costs

417500 Fruit basket, mourning card, a flower bouquet etc.
417501 Contributions to the staff association
417502 ….

An adjusted ledger schedule may help to avoid the situation that EAS-relevant allowances and benefits in kind need to be somehow retrieved in the financial records later on. A correct and complete registration is furthermore stimulated by assessing the EAS influence on an expense when primary entered in the records.
The staff will probably need to be EAS trained for this.

12.2 EAS settlement system

Further to this, the administration must include an update of how much free space is left and when the withholding agent must start paying the final levy.
This will only need to be reviewed once a year from 2015. The withholding agent can test in one single go whether the free space (1.2%) has been exceeded through the annual settlement method when the calendar year has ended. If the free space is exceeded, the withholding agent must pay an 80% final levy on the excess amount. This must be indicated and paid in the initial period of the new calendar year. In case of a declaration period of one month, this will be the wage-levy declaration on the month of January which is returned in February.

You may alternatively opt for declaring and paying the tax due at an earlier time (in case the free space earlier in the year was exceeded). If the withholding obligation ends during the calendar year, any due final levy must be declared and paid on the period in which the withholding obligation has ended.

13 International aspects

Up to this chapter, the focus has only been on employees living in the Netherlands with an employer established in the Netherlands.
The EAS also applies to border-crossing situations. One situation has been adopted in the EAS legislation, which is that the employee is liable to pay tax in the Netherlands and is employed with an employer established abroad. The EAS legislation does not (yet) provide a solution to any other possible border-crossing situations.
The solution must come from the (international) regulations, which also provided for the prevention of double taxation up to the introduction of the EAS. This includes tax treaties and in the case of absence of such treaties, the Decision on the Prevention of Double Taxation, which is a unilateral scheme set up by the Netherlands and which is only applicable to Dutch citizens.

In conclusion, also the social-security position is relevant to the employee in border-crossing transactions.
We will (only) deal with this in chapter 13.2.2 as the EAS is not a tax rule.

13.1 Tax Treaties

Tax treaties are arrangements made among the various countries about the assignment of a taxation right in order to prevent the creation of double taxation.

There is consensus about the fact that the EAS, which is actually some sort of final levy, is included in the application scope of tax treaties, as a specific form of wage tax. This is brought into alignment with the allocation rules resulting from the labour articles in the tax treaties. The labour articles (usually) include the following different categories:

- Income from dependent personal services (most common variant, employee's article);
- Director's remuneration;
- Pensions;
- National insurance benefit payments;
- Public sector's salaries and pensions.

The various categories allocate the wages, salary or income to the residential state or work state or source state (state where the payments originate from) or both.
Since the large majority of the issues regarding the EAS in the application of the treaty deal with dependent personal services (employee), we will from now on only deal with this category.

As the EAS is taxed from the employer as a final levy (on the employee's wages), the employer will have to appeal to the treaty application in order to avoid double taxation.

13.2 Application of the treaty on various basic principles

The impact of the treaty is further specified in the following situations below:

- employee lives in the Netherlands and works abroad;
- employee lives abroad and works in the Netherlands;
- employee lives and works abroad;
- employee from a group section abroad is on the Dutch payroll;
- employee works in the Netherlands without a Dutch withholding agent.

13.2.1 The employee lives in the Netherlands and works abroad

Basically, no rules other than those for employees who live and work in the Netherlands apply to an employee who lives in the Netherlands on the payroll of a Dutch employer and who (also) works abroad.
The employee is usually socially insured in the Netherlands by virtue of a social-security treaty, the European regulation or the national Dutch legislation. This applies to both of the national insurances, the employee's insurances and the health-care act. The wages of such social security legislation are equal to the wages for the wage tax, whereby the assigned final-levy wage is disregarded.

The wages (including allowances and benefits in kind) come under the wage-tax legislation. The employer may assign (part of) the allowances and benefits in kind as a final-levy component. Effectively, no or less Dutch tax may possibly be due on the wage or part of the wage, on account of border-crossing work.
This may be the case when a tax treaty allocates the taxation on the wage to the country abroad (work country). In that case, the total wage bill that is relevant to the application of the EAS may initially also comprise the wage that, with regard to the taxation, has been allocated to another country (abroad) pursuant to a tax treaty.
To avoid double taxation, an employer may in that case opt for withholding and pay less wage tax. Also the employee may help to prevent double taxation by entering an exemption or a tax-credit or a deduction in his income-tax declaration.

The free space will be calculated based on a wage bill that also comprises foreign components. If the free space (1.2%) is exceeded, the employer must pay 80% final levy while the underlying cause, the employment partly performed abroad, has been allocated to the country abroad with respect to taxation. The result of the exemption is that the final levy is partly cancelled. In order to come to the correct final-levy amount, the final levy must, according to the method used by the Tax Authorities, be deducted based on the following calculation (the collective method):

1. calculate the total taxable wage according to the wage state of all the employees, to the extent it is not charged in the Netherlands;
2. divide the outcome of the calculation by the total tax-wage bill of all staff;
3. multiply the outcome of this fraction by the initially due final levy (80%) on account of the application of the EAS.

The outcome of the calculation is a reduction of the payable final levy.

Example:

Employees	Work country	Wage	Allowance/Benefit in kind
Jan	Germany	€ 250	€ 35
Marc	Netherlands	€ 250	€ 25
Alex	Netherlands	€ 500	€ 50
Total		€ 1,000	€ 110

The total taxable wage is € 1,000. The free space amounts to € 12 (€ 1,000 * 1.2%).
Suppose that all allowances and benefits in kind have been assigned by the employer as final-levy wages, then the free space is exceeded by € 98 (€ 110 -/- € 12). 80% final levy is due on the excess amount, which comes down to a final levy of € 78.

The reduction amounts to the following:
Step 1: the total taxable wage of all the employees, which is not taxed in the Netherlands, amounts to € 250
Step 2: the total taxable wage of all employees amounts to € 1,000.
Step 3: € 250/€ 1,000 = 25%. The part of the final levy not charged in the Netherlands amounts to
€ 78 x 25% = € 19.50.

The final levy according to national legislation amounts to € 78. Part of this final levy is cancelled due to the effect of the tax treaty. In this example, this reduction amounts to € 19.50, so that the employer is due a final levy of € 58.50 (€ 78 -/- € 19.50).

The individual method
The tax authorities furthermore allow a calculation of the final levy according to the individual method.
If we take the amounts mentioned from the example, the final levy is calculated as follows:

Step 1: The total taxable wage of all employees amounts to € 1,000. The free space is 1.2% x € 1,000 = € 12.
Step 2: The free space is exceeded by € 98 (€ 110 -/- € 12). An 80% final levy is due on this amount,
80% x € 98 = € 78.
Step 3: The part of the allowances, benefits in kind (incl. provision of facilities) of employees, which can be attributed to work with wages not taxed in the Netherlands, amounts to: € 35
Step 4: The total amount for allowances, benefits in kind (incl. provision of facilities) of all employees is € 110.
Step 5: The part of the final levy not charged in the Netherlands amounts to € 35/ € 110 x € 78= 24.82.
Step 6: The final levy amounts to € 53.18 (€ 78 -/- € 24.82).

The alternative method
The alternative method works as follows:
The total taxable wage only amounts to the wage related to the Netherlands, exclusive of the free allowances and benefits in kind (€ 750). The free space amounts to 1.2% of the total taxable wage in the Netherlands, i.e. € 9. The allowances and benefits in kind related to the Netherlands amount to € 75. The free space is exceeded by an amount of € 66 (€ 75 -/- € 9). The proportion between the German allowance of € 35 and the total Dutch allowances and benefits in kind of € 75 is (35/75th part) 46.6%. This means that the final levy will have to be reduced by 26.6% instead of by 25% (€ 250/€ 1,000). This can be achieved by calculating the final levy on only the allowances and benefits in kind that are related to the Netherlands, i.e. € 75.
The free space is now only calculated on the wages taxed in the Netherlands € 750). The free space is in that case € 9 (€ 750 x 1.2%). The employer must eventually pay a final levy of € 52.80 ((€ 75 -/- € 9) x 80%).

The alternative method can only be used if jurisprudence confirms that this method can be used by the employer beside the method from the Tax Authorities.

The calculation method from the Tax Authorities is more to the withholding agent's disadvantage if the proportion of the foreign and Dutch wage bills are smaller than the proportion between the allowances and benefits in kind to be attributed to the country abroad and the Netherlands. If this ratio is greater, then the Tax Authorities' method is to a greater advantage.
The calculation method regarding the 80% final level of the Tax Authorities causes a reduction in the administrative burden for the employer, however is not a correct application of the rules adopted in the tax treaties. If the employer should (be allowed to) use the alternative method, he correctly applies the rules from the tax treaties, however, the EAS would cause an increase in the administrative burden.

13.2.2 The employee lives abroad and work in the Netherlands

If the employee lives abroad and works in the Netherlands for an employer established in the Netherlands, the same rules apply as for regular employees with regard to the application of the EAS.

If the employee only works in the Netherlands, the entire wage will be subject to taxation in the Netherlands.
If the employee partly works abroad, the tax treaty shows what part of the remuneration for the taxation is assigned to the Netherlands. The residential country (i.e. the country abroad) usually has a rule that the worldwide income in that country is included in the taxation. The residential country must in that case prevent double taxation for the part of the taxation that has been assigned to the Netherlands.

If the employer exceeds the free space, he will be due a 80% final levy. If part of the employee's wages is assigned to the Netherlands based on the tax treaty, the employer is only due the final levy on the part of the total wage assigned to the Netherlands.
The employer must determine for each (border-crossing) employee to what extent he must withhold wage tax from the employee based on the tax treaty and also to what extent he is due any wage tax in the form of a final levy on the final-levy components assigned to the employee.

Example
The employee lives in Brussels and works for a Dutch employer. 30% of the employee's wage, which is fully paid by the Netherlands, is at the expense of the permanent establishment in Brussels and 10% in Bremen.
Suppose that pursuant to the treaty, 40% has been assigned to Belgium/Germany, then 60% will be taxed in the Netherlands.
The employee's total wage amounts to € 100,000. This amount is inclusive of € 10,000 final-levy wage since the 1.2% free space has already been exceeded.

The wage in the Netherlands is now taxed as follows:

60% of € 90,000 is € 54,000

This amount is also included in the basis on which the employer may calculate the free space (1.2%).

The Netherlands can furthermore tax 60% on the final-levy wage.

60% of € 10,000 is € 6,000.

This is taxed at an 80% final levy, which comes to € 4,800.

If the rules for the prevention of double taxation are not applied, the entire wage will be taxed in the Netherlands. The employer will then withhold too much wage tax. The employee may receive a tax return for this wage tax through his income-tax return. In that case, the employer pays the full final levy; no part of the final levy is cancelled.

Social security
The percentage of the Dutch wage levy consists of a wage-tax percentage and a social security percentage (AOW/ANW/WLZ), depending on the amount of the wage. The situation may be that although the employee is liable to pay tax in the Netherlands, he is not covered by social insurance or vice versa. The question as to whether an employee is covered by social insurance in the Netherlands has no implications for the question as to how the taxation works.
The country where the employee is covered by social insurance is provided in a European regulation (basis regulation no. 883/2004 and application regulation no. 987/2009), a social-security treaty or the national Dutch legislation. If the employee is covered by social insurance in the Netherlands, the employer calculates the contribution on the wage. The wage for such social insurance legislation is equal to the wage for the wage tax. However, the assigned final-levy wage is disregarded. In conclusion, the maximum wage assessable for national insurance of € 54,614 in 2018 must be taken into account.

An employee without Dutch tax liability, however with a Dutch contribution-payment liability
In this case, only a contribution must be calculated on the employee's income. It seems right to include the 'foreign' wages in the wage state. For the calculation of the free space and for the determination of how the free space is used (the tax components), however, it seems right to disregard the wage of and the allowances and benefits in kind to the 'foreign' employee.

An employee with a Dutch tax liability, however with no Dutch contribution-payment liability
As stated above, the same rules as those for regular employees basically apply to employees subject to Dutch taxation with regard to the EAS. When, however, there is no contribution-payment liability, there may be cases

where the assignment of wage components may have a negative effect with regard to the application of the EAS. This mainly happens in the case of an excess in the free space. Without a contribution-payment liability in the Netherlands, there are only the relatively low tax rates in mainly the first and second brackets. When there is an intention to pay or provide wage components on a net basis, a gross-up will be 'cheaper' using these law rates than when using the rate of the EAS final levy, i.e. the 80% final levy. This effect also occurs in cases where the 30% scheme may be applied. The implication of this is, however, that instead of a consideration on a collective basis (as intended under the terms of the EAS), the individual will nevertheless have to be taken into consideration.

13.2.3 The employee lives and works abroad

An employee who lives and works abroad, is not likely to be subject to Dutch wage tax. The EAS will in that case not be applicable.

This is only different in the case of e.g. chauffeurs, commissioners or officials who may indirectly end up in the Dutch wage-tax system through a treaty and despite the fact that they live and work elsewhere. This situation may be possible for the following persons:

- a chauffeur or commissioner of a body established in the Netherlands;
- an employee who is employed by the State of the Netherlands;
- an employee who has been posted abroad by the Dutch State.

The situation may be that part of the wage is not taxed in the Netherlands as a result of a tax treaty in order to prevent double taxation. If that is the case, the tax authorities state that the entire wage including allowances and benefits in kind (including the Provision of facilities) must initially be taken as a basis for the calculation of the EAS final levy. Subsequently, the rules to prevent double taxation must be applied to the wages of the employee who is taxed in the country abroad. This is to prevent the situation that part of the wages is also taxed in the Netherlands. If the free space is exceeded, part of the final levy is cancelled. This part can, according to the tax authorities, be calculated using the collective method or the individual method (see Ch. 13.2.1).

13.2.4. Employee from a group section abroad on the Dutch payroll

When a company is part of the Dutch section of an international business (a multinational), a (posted) foreign employee with an employment contract with another group section (and who is therefore not on the payroll of the Dutch group section) can nevertheless be adopted in the Dutch salary records (Art. 6, section 6, 1964 wage-tax Act). Such employee will formally be employed by a foreign section of the multinational; however the Dutch section pays wage tax for such employee in the Netherlands. The inspector must, however, issue a relevant decision at the request of both the employer and the employee. The reason why this happens is that the employee may be eligible for the 30% taxation rule. This also prevents an administrative burden, otherwise the foreign group could have (voluntarily) reported itself in the Netherlands as a withholding agent.
In this case the EAS applies to this employee, just as to other employees working in the Netherlands.
The Dutch employer allows for any allowances, benefits in kind and facilities provided by the foreign section of the multinational. The employer assesses whether such allowances, benefits in kind and provided facilities are to be considered an allowance, benefits in kind and facility and whether they stay within the standard amounts. If not, such allowances, benefits in kind and facilities are (taxed) wages for the employee. However, the employer may also assign this wage as a final-levy wage.

13.2.5 The employee works in the Netherlands without a Dutch withholding agent

The EAS is applied by a withholding agent (the employer). The employer has the possibility of assigning certain allowances and benefits in kind as final-levy component. The employee cannot exert any influence on this. Such influence is even less if the employer is not established/a withholding agent in the Netherlands. This may cause a problem: without having access to the possibility of a free space and the application of specific exemptions, the employee may, without a Dutch withholding agent, be off worse than an employee with a Dutch withholding agent: anything received from an employment, including allowances and benefits in kind, constitutes wages and there is no withholding agent who may assign certain wage components for the application of the EAS.
In order to (partly) counterbalance this disadvantage, the legislator has adopted a statutory provision in the come tax [11] . While using the possibilities for specific exemptions and the calculation and application of the free space, the employee may as much as possible re-calculate his wages according to the annual statement, increased by all the allowanced and benefits in kind, into a newly composed taxable wage. Through method, the employee can effectively apply the general EAS exemption (1.2%; 2018) entirely to the benefit of himself. This may either have a beneficial or a detrimental effect.

The employer who is not liable to withholding tax obviously has the possibility to voluntarily subject himself to the (Dutch) wage-tax system (Art. 6, section 2, letter b, 1964 wage-tax Act). See Ch. 13.2.4 for further information.

[11] article 3.84, section 2 of the 2001 Income-Tax Act

Example

An employee lives in Amsterdam and works for a Belgian employer. The Belgian employer is not established in the Netherlands and will therefore not withhold any wage tax from the wages and the allowances and benefits in kind for the employee:

The worldwide income is made up of the following components:

Wages	€ 60,000
Travel-expense allowance	€ 7,000 (25,000 km x € 0.30)
Meal vouchers	€ 2,000 (suppose of which € 1,000 costs for temporary accommodation)
Fixed expense allowance	€ 2,000 (suppose of which € 1,250 specific exemption)
Total	€ 70,000

Recalculation of the salary pursuant to Art. 3.84, section 2 of the 2001 Income-Tax Act

Total	€ 70,000
LESS:	
Specific exemption for travel exp.	€ 4,750 (25,000 km x € 0.19)
Meal vouchers	€ 1,000
Fixed expense allowance	€ 1,250
Re-calculated wages	€ 63,000
LESS:	
Free space (1.2% x € 63,000)	€ 756
Recalculated taxable wages	€ 62,244

13.2.6. Outline of EAS in situations abroad

Factual situation	EAS implications
The employee is not an employee with regard to the wage tax.	The wages, allowances, benefits in kind and provided facilities do not come under the EAS
The employee is an employee with regard to the wage tax and the wage is taxed in the Netherlands.	The wages, allowances, benefits in kind and provisions come under the EAS.
The employee is an employee with regard to the wage tax. The wage is (partly) not taxed in the Netherlands, for example because of a tax treaty. The employer does, however, withhold wage tax.	The wages, allowances, benefits in kind and provisions come under the EAS. With the application of the rules for the prevention of double taxation, the part of the final levy related to the wages that are not taxed in the Netherlands, is cancelled. This part can be calculated using the collective or individual method.

14 In conclusion

Most changes following the 2018 Tax Plan and the parliamentary process have been discussed in this brochure.

Please contact us for any further information and assistance.