



Meijburg & Co  
Tax & Legal

# DED adjustment and VAT adjustment private use of company car

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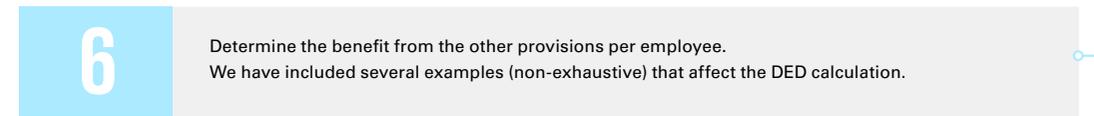
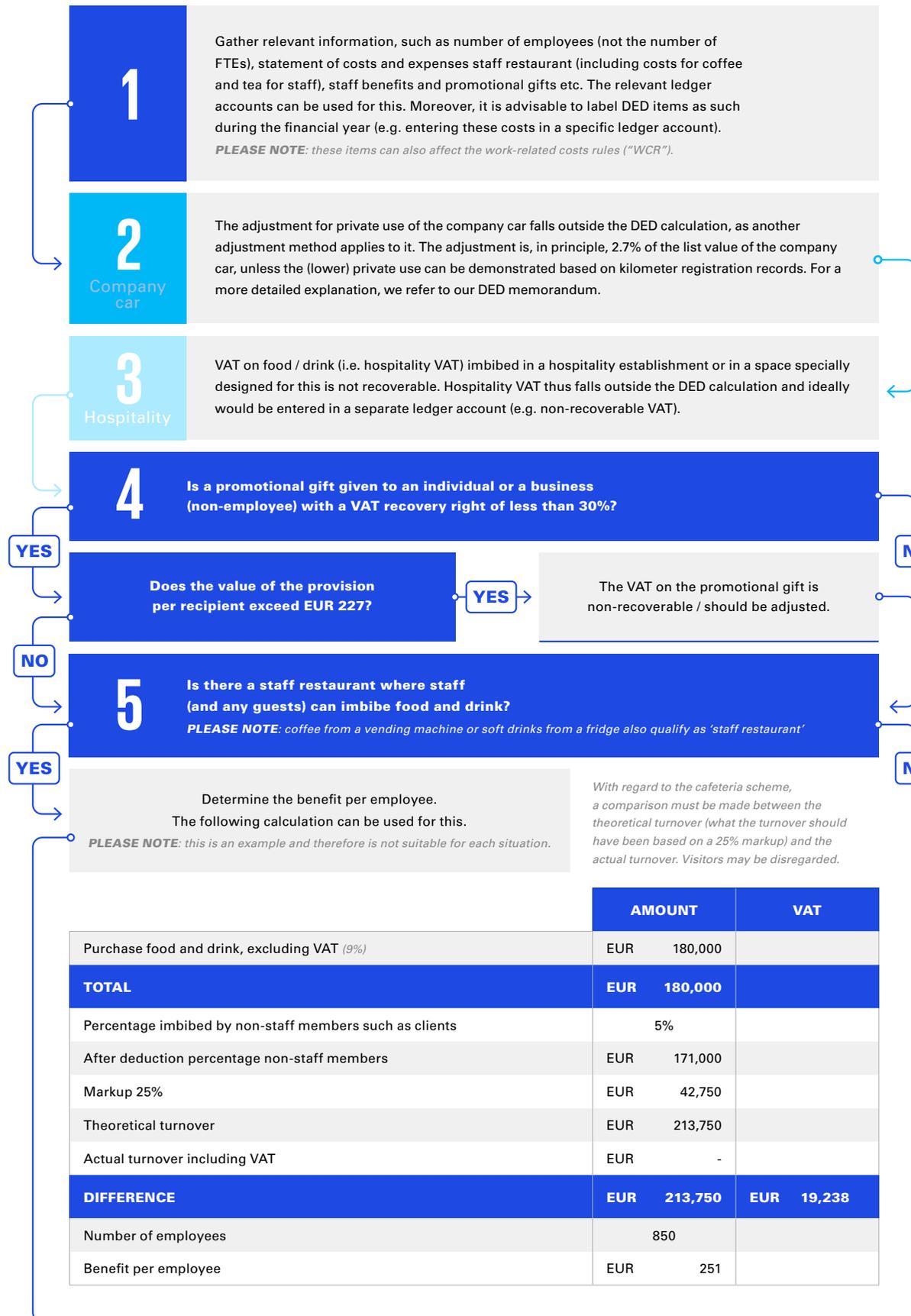
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# Flowchart DED calculation

The VAT Deduction Exclusion Decree ("DED") precludes the recovery of VAT on promotional gifts and staff benefits if they were provided free or below cost by the business. A threshold of EUR 227 per recipient applies. No DED adjustment is necessary if the total

purchase and production costs (the cost price) of the benefits are less than EUR 227 (excluding VAT) per annum per recipient. This is a final threshold: if the threshold is exceeded, the input VAT on the provisions within the threshold amount is also non-recoverable. This flowchart

can be used to determine in general terms and on a step-by-step basis whether a DED adjustment is necessary. For a more detailed explanation, we refer to our DED memorandum.



**Staff party - Telephone/Tablet/Laptop - Company bicycle - Christmas gifts - Gifts/Cards - Gifts for employment anniversaries - Flowers**

- We recommend identifying which ledger accounts are relevant for the DED calculation and assigning them to employee categories.
- There are many provisions that fall under the DED calculation, such as making company accommodation available to employees, courses, sport subscriptions etc. For a more detailed (non-exhaustive) overview, we refer to our DED memorandum. If you have doubts about a particular cost item, please feel free to contact us.

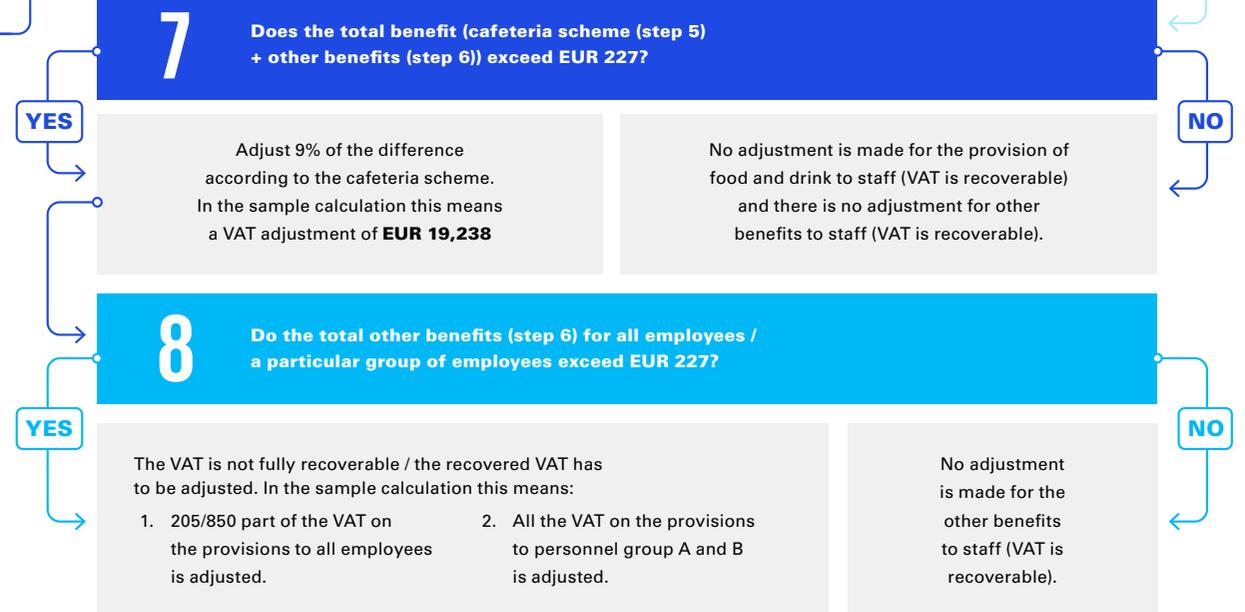
*PLEASE NOTE: only if there is (partial) private use (e.g. mobile phone) a value is included in the DED calculation. It is advisable to agree this with the Dutch tax authorities.*

*PLEASE NOTE: for the DED calculation, it is advisable to divide staff into groups, as not all employees receive each benefit.*

## EXAMPLE DED CALCULATION

		PROVISION TO ALL EMPLOYEES	PROVISION TO PERSON GROUP	TOTAL PROVISION	ADJUSTMENT?
<b>ALL EMPLOYEES (850)</b>					
Christmas gift (purchase invoices)	EUR 46,750				
Staff party	EUR 25,000				
Gifts / cards / flowers	EUR 15,000				
Team events (excluding hospitality costs)	EUR 14,500				
	<b>EUR 101,250</b>	EUR 119			<b>NO</b>
<b>PERSONNEL GROUP A (E.G. 180 SPORTERS)</b>					
Sport subscriptions	EUR 75,000				
	<b>EUR 75,000</b>	EUR 119	EUR 417	<b>EUR 536</b>	<b>YES</b>
<b>PERSONNEL GROUP B (E.G. 25 EMPLOYEES CELEBRATING AN EMPLOYMENT ANNIVERSARY)</b>					
Employment anniversary gifts	EUR 20,000				
	<b>EUR 20,000</b>	EUR 119	EUR 800	<b>EUR 919</b>	<b>YES</b>

*PLEASE NOTE: This is an example and therefore is not suitable for each situation.*



# Introduction

## General

This memorandum is intended as a supplement to the enclosed flowchart and explains the eight steps in more detail. The VAT Deduction Exclusion Decree (Besluit uitsluiting aftrek omzetbelasting) ('DED') precludes the recovery of VAT (also referred to as input VAT) on promotional gifts and staff benefits if they are provided free of charge or below cost by the employer. That employers often have a business-motivated reason for providing gifts and staff benefits (for example, client relationship management, staff commitment, etc.) is irrelevant. The rationale for not allowing input VAT to be recovered is based on the fact that these costs, while business-related, are consumption-oriented, and VAT is a tax specifically designed to tax consumption. A threshold of EUR 227 per recipient applies. If the total purchase or production costs (the cost price) of the provisions are less than EUR 227 (excluding VAT) per recipient per financial year, then the employer does not have to make a DED adjustment. If the threshold is exceeded, then the employer must make a DED adjustment in the last VAT return of the financial year. This is a final threshold: if the threshold is exceeded, the input VAT on the provisions within the threshold amount is also non-recoverable.

## VAT-exempt services

If an employer only performs VAT-exempt services, there is no entitlement to recover the VAT on promotional gifts and staff benefits (aside from the staff restaurant). If an employer performs both taxable and tax-exempt services, the VAT is fully recoverable if the promotional gifts and staff benefits are entirely attributable to the VAT-taxed services. If the promotional gifts and staff benefits are directly attributable to the VAT-exempt services, then there is no VAT recovery right. If the promotional gifts and staff benefits are not specifically attributable to either the taxable or the tax-exempt services, then the VAT can be recovered in accordance with the employer's pro rata recovery.

## Please note: VAT on company cars and hospitality

The company car has its own adjustment system and the VAT on costs related to food and drink in hospitality establishments is, at least in principle, non-recoverable. Therefore, these costs should not be included in the calculation of the threshold amount for the DED. This memorandum first outlines the adjustment system for the company car (Step 2) and the VAT treatment of costs related to food and drink in hospitality establishments (Step 3) before addressing the DED adjustment.

## Benefit categories to which the DED applies

The DED applies to the offering of private transport, the provision of food and drink, the provision of accommodation, offering staff the opportunity for sport and relaxation and to giving promotional and other gifts to them for which there is no (full) input VAT recovery right. Salary in kind (insofar as it does not fall under the above categories) and goods and services that staff use for other private purposes, such as a Christmas gift, a staff party or other company outings, and computers / iPads and mobile phones (that staff (also) use in private) fall under the DED.

## COVID-19 update

The COVID -19 pandemic may affect the application of the DED. It is therefore important to pay extra attention to the provision of staff facilities for working from home (these are elaborated on in Step 6).

## STEP 1

# Gather information

It is important to gather all relevant information so that an accurate calculation can be made for the private use of the company car and for 'hospitality VAT' and to determine whether a deduction limitation applies under the DED to (other) staff benefits and promotional gifts. It is also important that the business is the purchaser of the services and/or goods. Therefore, the invoices have to be made out in the name of the business (and not, for example, the employee). For invoices with a total amount not exceeding EUR 100 (including VAT), a simplified invoice could be issued. The business that wants to recover the VAT charged on such simplified invoices, will have to demonstrate that it is the purchaser of the services and/or goods.

We have distinguished the following four categories for the purposes of gathering the relevant information:

- Company car
- Hospitality
- Cafeteria scheme
- Promotional gifts and other staff benefits

### Company car

Step 2 elaborates on the adjustment system for the private use of the company car. The following information is relevant for determining the private use of the company car per employee:

- a list of the number of company cars<sup>1</sup>;
- the list price;
- period used;
- a comprehensive kilometer registration<sup>2</sup>

<sup>1</sup> Company cars must also be included if employees have signed a Statement of No Private Use of Company Car for the purposes of payroll tax and social security contributions. Due to the difference between payroll tax and social security contributions and VAT, a Statement of No Private Use of Company Car for the purposes of payroll tax and social security contributions does not automatically mean there will be no adjustment for private use for VAT purposes.

<sup>2</sup> A comprehensive kilometer registration is only relevant if the adjustment is made on the basis of actual use (see Step 2).

### Hospitality

The VAT treatment of costs related to food and drink provided in hospitality establishments is explained in more detail in Step 3. The following information is important to provide insight into the costs incurred for food and drink provided in hospitality establishments:

- a list of all hospitality expenses;
- hospitality VAT may also be concealed in certain invoices, for example invoices issued by hotels, or invoices related to events.

### **Food and drink for staff at the workplace**

The cafeteria scheme is part of the DED adjustment and is elaborated on in Step 5. Please note that drinks dispensed from, for example, a coffee machine in a staff social area also falls under the scope of the cafeteria scheme. The following information is essential for determining whether an adjustment must be made for the purposes of the cafeteria scheme:

- the purchase costs for food and drink or the raw materials used therein;
- the turnover realized from the staff restaurant;
- the average number of employees;
- the number of non-staff members who have used the staff restaurant.

### **Promotional gifts and other staff benefits**

For the purposes of the DED adjustment, it is important that a list of promotional gifts and other staff benefits is made (see Step 4 and Step 6). The relevant ledger accounts can be used for this. Moreover, it is advisable to label DED items as such during the financial year (e.g. entering these costs in a specific ledger account).

## STEP 2

# Private use of company cars

If the company car is also used privately, then this private use is regarded as a service provided to the employee by the employer. The employer must remit VAT on this service in the final VAT return of the financial year, in most cases this is the December VAT return or the fourth quarter return. Current legislation is discussed below.

### 2.1

#### Tax on the private use of company cars

If an employer provides an employee with a company car, the employer can recover all the VAT charged on the purchase costs, the lease or rental payments, the maintenance and fuel costs, etc. based on the recovery percentage applying to the employer. If employees use the car privately, this private use will be taxed. Private use can, for example, involve situations that are clearly private, such as visits to family or friends or using the car to go shopping (but also commuting; see also below).

#### Adjustment based on actual use and application of the fixed amount

The basic assumption with regard to the private use of a company car is that the adjustment must be based on the actual private use of the car. Kilometer registration records can be used to ascertain the degree to which a company car has been used for private purposes. However, keeping such records is an onerous task, and is generally not something employers can demand of their employees. Partly for that reason, approval has been given for the employer to apply a fixed percentage of 2.7% of the list value of the car, including VAT and private motor vehicle and motorcycle tax. This only applies in those cases where it is impossible to determine from the accounts the extent to which the car was used for private purposes and/or which costs are to be allocated to this private use.

If an employer only has a partial right to recover the input VAT on car expenses, the fixed amount must be applied on a pro rata basis. If a car has been purchased without VAT being charged, a fixed percentage of 1.5%, rather than 2.7%, may be applied and the VAT on the other car expenses may be deducted. The Deputy Minister of Finance has also given approval for a lower fixed percentage of 1.5% to apply after a purchased car has been used by the company for five years.

This means that the lower fixed percentage can be applied after the end of the fourth year following the year in which the company started using the car. The Deputy Minister of Finance has laid down by Decree that the private use of a company car may also be determined in other ways than by means of a fixed percentage or a comprehensive kilometer registration system. If the fixed amount is not applied and there is no kilometer registration system, then the level of private use must be realistically determined taking all the circumstances of the case into consideration. Circumstances that must be taken into account in this assessment are:

- the type of company;
- the business purposes for which the purchased car is used within the company;
- the position the person using the car holds within the company and the activities they perform for the company;
- what is known about the way in which the car may be or is used privately, for example for commuting (see 2.2 below).

If statistical data is relied on, the above circumstances must be used to convincingly demonstrate that this data is usable in the particular case.

### 2.2

#### Private use of company car and commuting

##### Commuting

In contrast to payroll tax and social security contributions, commuting constitutes private use for VAT purposes. Commuting is defined as: travel between the place of residence and the fixed workplace as agreed in the employment contract. If no employment contract has been concluded, commuting is defined as travel between the place of residence and the company's office address.

Please note: due to the difference between payroll tax and social security contributions and VAT, a Statement of No Private Use of Company Car for the purposes of payroll tax and social security contributions does not automatically mean that there will be no adjustment for private use for VAT purposes.

### Peripatetic employees

Employees with no fixed workplace (peripatetic employees) are only considered to commute if this involves driving from their home to a fixed (agreed upon) business address belonging to the employer. The fixed adjustment for peripatetic employees will therefore often be too high. However, no separate approval has been given for peripatetic employees. In this context, we recommend that you contact your advisor to see which options may be available to reduce the fixed adjustment / calculate the adjustment in another way.

### Employees who only commute

If the company car is only used privately for commuting, which is, for example, often the case with a delivery van driven by non-peripatetic employees, tax relief for the administrative burden is available. In such situations, the employer can determine the actual use by multiplying the commuted distance by the number of commutes per year, and deducting this figure from the total kilometers driven in a year. The annual number of working days can be taken as 214. The 214 working days may be applied on a proportionate basis if the workweek is less than five days or if the employment relationship began or ended during the calendar year.

## 2.3 Sample calculations

### EXAMPLE 1: Adjustment for private use of a company car at an employer with a full VAT recovery right

An employer with a full VAT recovery right makes a company car with a list price of EUR 50,000 (inclusive of VAT and private motor vehicle and motorcycle tax) available to an employee as of January 1, 2022. No kilometer registration records are kept and no contribution is asked of the employee. For the sake of convenience, the benefit for VAT purposes is calculated using 2.7% of the list price on an annual basis. VAT amounting to EUR 1,350 (2.7% of EUR 50,000) must be paid annually.

### EXAMPLE 2: Adjustment for private use of a company car at an employer with a partial VAT recovery right

An employer with a partial VAT recovery right makes a lease car with a list price of EUR 50,000 (inclusive of VAT and private motor vehicle and motorcycle tax) available to an employee as of January 1, 2022. No kilometer registration records are kept and no contribution is asked of the employee. The expenses attributable to the car in that year amount to EUR 10,000 excluding VAT. The employer is entitled to recover 40% of the input VAT.

For the sake of convenience, the benefit for VAT purposes is calculated using 2.7% of the list price on an annual basis. In this situation, there is a partial VAT recovery right. 40% of the input VAT on the car expenses (EUR 2,100) may be recovered. In addition, VAT amounting to EUR 540 (40% of 2.7% of EUR 50,000) must be paid in respect of the private use of the company car.

### EXAMPLE 3: Adjustment for private use that differs from the fixed amount

The list price of a delivery van is EUR 35,000.

The annual VAT on the car expenses is EUR 2,500. The car is used by a warehouse employee who, on average, once a week drives directly home with the van and back to work the next day (approximately 46 times per year). After the commute and on the other working days, the van is used to visit suppliers and customers.

The employee does not use the car privately (commuting does not qualify as private use for payroll tax and social security contributions purposes; it does for VAT purposes).

The commute is a total of 30 kilometers for each trip.

The total number of kilometers traveled on an annual basis is 60,000.

The VAT adjustment based on actual private use is then  $((46 \times 30) / 60,000) \times \text{EUR } 2,500 = \text{EUR } 57.50$ .

Fixed VAT adjustment:  $2.7\% \times 35,000 = \text{EUR } 945$ .

Difference: EUR 887.50.

## 2.4

### Employee contribution

If the employer asks an employee to contribute to the private use of the company car, the VAT on this contribution must be paid to the Dutch tax authorities.<sup>3</sup> If the employee contribution is less than the standard value of the item made available, VAT must be charged on this 'standard value'.

Because the standard value is often difficult to determine in practice, the (reduced) fixed adjustment is applied (2.7% or 1.5%). However, if the VAT on the employee contribution is higher than the fixed amount, the employer must remit VAT on the full employee contribution. In that case, the fixed amount does not apply.

## 2.5

### Special rules for car lease companies

Employees or the proprietor of a car lease company sometimes use cars belonging to the company for private purposes. An approval applies in such cases, whereby for the purposes of the taxable amount on which the 2.7% is payable, a non weighted average list price may be used for all those involved.

## 2.6

### Objections to the adjustment

It can be worthwhile to file a notice of objection against the payment of a reported VAT adjustment, provided this lower adjustment can be substantiated. If a comprehensive kilometer registration system is not used, then for the purposes of determining the level of private use all circumstances of the case should be taken into account (see also section 2.1).

<sup>3</sup> If you have employees who live outside the Netherlands, we recommend that you contact your advisor.

## STEP 3

# Hospitality

In the Netherlands, the VAT on food and drink purchased in catering establishments is non-recoverable (regardless of the reason for its purchase), unless the business purchasing the food and drink is not the end-user. In principle, this also applies if a caterer supplies the food and drink at the customer's office or at premises leased from a third party (but not, for example, in the case of take-away sandwiches).

The non-recoverable VAT on food and drink in hospitality establishments therefore does not fall under the DED and these costs do not have to be included in the calculation of the EUR 227 threshold.

### **VAT treatment of food and drink that is not purchased as end-user**

Generally, the VAT charged on hospitality provisions is thus non-recoverable. However, it has been approved that the VAT charged on food and drink may be recovered if the business does not purchase the food and drink as end-user and the costs of the food and drink are recharged with VAT to a third party. The application of this approval is subject to the condition that the business indicates on its invoice to the customer that this concerns "the provision of food and drink for use on-site as referred to in Section 15(5) of the VAT Act 1968". This makes it clear for the customer that there is no VAT recovery right, unless the customer is also not the end-user and can use the approval.

## STEP 4

# Promotional gifts to third parties

Promotional gifts are gifts other than cash gifts given by businesses to their customers, suppliers, etc. for commercial reasons. Gifts are generally defined as benefits given by businesses to foundations and similar institutions that are not entitled to recover input VAT.

In general, input VAT cannot be recovered on the following:

- gifts to individuals;
- gifts to fully exempt businesses, such as hospitals, the Red Cross, etc.;
- gifts to businesses that cannot deduct the VAT or can only deduct less than 30% of it if they had purchased the goods themselves.

The input VAT on the above gifts is recoverable if the value of the provisions per recipient per annum is less than the threshold of EUR 227.

Any business that provides promotional gifts to persons entitled to recover input VAT can, in principle, fully recover the input VAT on these gifts. However, this is not the case if the nature of the goods mean they can only be used for private purposes (for example, household appliances, cosmetics, or non-professional books). In that case, the DED applies.

If you invite a business client to join you for a meal in a restaurant, the VAT charged cannot be recovered, regardless of the threshold of EUR 227 (see Step 3).

## STEP 5

# The cafeteria scheme

Businesses that provide food and drink to staff and to their visitors are regarded as performing a taxable supply. This also applies to VAT-exempt businesses such as banks, insurers and non-profit organizations. Businesses must therefore remit VAT on any income generated by this service. The input VAT on the purchases, inventory, maintenance of the staff restaurant, etc. is, in principle, fully recoverable.

The scope of the cafeteria scheme is different to what is normally meant by the term 'cafeteria'. In addition to what is provided by the staff restaurant, dispensing drinks from, for example, a coffee machine in a staff social area also falls under the scope of the cafeteria scheme.

When preparing the last VAT return for the year, you must determine whether an adjustment needs to be made to the VAT recovered during the course of the year to ensure that staff have not received any benefits. Staff receive a benefit if a business provides food and drink to its staff below the cost price.

To determine whether food and drink has been provided below cost price, the actual turnover must be compared with the cost price (excluding VAT) of the ingredients and raw materials used in the food and drink increased by a fixed markup of 25%.<sup>4</sup>

To determine whether a VAT adjustment actually applies, you must first determine the benefit per staff member, not forgetting to take into account any visitors who may have used the staff restaurant. If the total benefit (staff restaurant and other benefits, see Step 6) exceeds EUR 227 per person per year, a VAT adjustment will apply to the benefit received from using the staff restaurant.

If the benefit received from using the staff restaurant (EUR x), together with the other benefits received (see Step 6), exceeds EUR 227 per employee per annum, a 9% adjustment must be made to the staff restaurant benefits (the positive difference calculated under point 5 in the following table). After this adjustment, the restaurant benefits are disregarded for the purposes of the EUR 227 threshold. The other benefits must then be checked to determine whether they exceed EUR 227 (see Step 6).

### Open book method

In practice, staff restaurants are often managed by external catering companies. In such cases, an open book method is generally applied. Under this method, the contracting party is responsible for the remittance of VAT. This means that the VAT return filed by the business in respect of the staff restaurant turnover and purchases must be based on the information provided by the catering company. The open book method requires the catering company to periodically submit the information necessary for the VAT returns, including a breakdown of the sales and an itemization of the costs incurred during that period.

It is advisable to check which contractual arrangements have been made with the catering company to determine the correct VAT qualification.

#### SCHEMATICALLY:

##### Calculating whether food and drink were provided too cheaply

1. Purchase costs (excluding VAT) of food and drink or the raw materials used therein (excluding purchases of tobacco products)	€ a
2. Fixed markup of 25% of € a	€ b+
3. Theoretical turnover	€ c
4. Actual turnover	€ d -/-
5. Positive/negative difference	€ e

#### SCHEMATICALLY:

##### Calculating the benefit per employee

€ e		
total number of employees	+	average number of visitors per day
		= € x

<sup>4</sup> Only the ingredients and raw materials have to be included for the purposes of the 25% markup increase. This fixed 25% markup is intended to cover the costs of the stock used by the business to prepare the food and drink and/or to serve it, such as kitchen appliances and china.

## STEP 6

# Other benefits

### Legal fees

In March 2020 the Supreme Court rendered judgment on the recoverability of the VAT on legal fees incurred by a company in a criminal case against the director-major shareholder. According to the Supreme Court, there is a direct and immediate connection to the economic activity of the company if the legal services purchased are necessary for the business operations. The judgment was referred back to the Court of Appeals Den Bosch to further examine whether there is a direct and immediate connection between the purchased legal services and the economic activity of the company. The Supreme Court noted that the DED does not apply if the needs of the company required the legal services to be purchased.

### Staff parties

As explained in Step 3, the VAT on food and drink in hospitality establishments is non-recoverable, regardless of the reason for its purchase (unless the purchaser is not the end-user). The VAT on food and drink in hospitality establishments therefore does not fall under the DED.

For the purposes of determining whether the VAT charged on receptions and/or parties organized by a caterer is recoverable, a distinction must thus be made between the provision of food and drink (as category non-deductible) and the provision of other services (including room hire and entertainment). If employees bring their partner along, the partners are not included in the calculation of the EUR 227 threshold. The following calculation serves to illustrate the above.

### EXAMPLE

Each year Company A organizes a party for its employees and clients. The party held in October 2022 was attended by 300 employees and their partners, and 200 clients and their partners. A total of 1,000 people attended. The costs for entertainment and room hire amounted to EUR 25,000; the costs for food and drink amounted to EUR 40,000. The VAT on food and drink is entirely non-recoverable. Whether the VAT on the costs for entertainment and room hire (amounting to EUR 25,000) is recoverable, depends on the total benefits per person per annum.

The partners of employees/clients do not have to be taken into account when determining the cost per employee/client. Consequently, the cost per person is:

$$\text{EUR } 25,000 / 500 = \text{EUR } 50$$

Whether there is an entitlement to recover input VAT depends on the application of the EUR 227 threshold in respect of the other benefits provided. It is unlikely that the EUR 227 threshold will be exceeded as a result of the provisions to clients. As such, this VAT can be recovered (with the exception of the VAT on food and drink).

## Gifts for employment anniversaries

Gifts given to employees celebrating an employment anniversary fall under the DED. This means that the input VAT on the purchase of the gifts is recoverable, unless the total benefit for the employee in question exceeds EUR 227 in the anniversary year.

## Courses / training costs

An employer that pays for courses for its staff can, in principle, recover any VAT charged on these courses, provided the courses are relevant to the position held, or to be held, by the employee in the company. In principle, the DED applies to a car skid control course, as this cost is regarded a private matter for the employee. This may not be the case for a business where driving proficiency is an occupational necessity, for example, a taxi company. Please note that VAT is not charged on a large number of (professional) courses on offer.

## Company bicycle

Employers who provide employees with a bicycle can recover the VAT on the bicycle if they can demonstrate that the bicycle was made available for commuting purposes and insofar as:

- the bicycle's purchase price does not exceed EUR 749 (including VAT), or if the bicycle is leased, the total cost (including VAT) of the lease does not exceed EUR 749;
- a bicycle was not made available to the employee or the employee was not provided with a bicycle during the calendar year in question and the two preceding calendar years;
- from the moment the bicycle was provided or made available until the end of the calendar year and in each of the two following calendar years, the employee did not receive an allowance or was not provided with a means of transport other than a bicycle, for 50% or more of the number of days on which the employee commuted.

An approval has been given that the VAT can also be fully recovered if the employee pays a contribution toward the bicycle, so that the maximum net amount paid by the employer is EUR 749. This approval also applies if the bicycle is leased. However, the employer must pay the VAT payable on the employee contribution. If the employer contributes more than EUR 749 (including VAT), then the VAT on the excess is non-recoverable. The employer can therefore recover a maximum net amount of EUR 130. Businesses that perform VAT exempt services and do not ask the employee for a contribution, or only require the employee to make a symbolic contribution, are not entitled to recover VAT on purchased bicycles. For practical reasons, it has been approved that the bicycle may also be used by the employee for private purposes other than commuting.

## Free transport passes provided by passenger transport companies

Free or subsidized transport passes that passenger transport companies provide to staff (and their family members) fall under the DED. Transport passes provided to retired staff (and their family members) do not fall under the DED.

## Accommodation

If an employer provides company accommodation to an employee or rents accommodation in its own name and allows the employee to live in it free of charge or at a low rent, then the VAT charged on the related costs (for example, a specialized agency that acts as intermediary and maintenance costs for the accommodation) is, in principle, non-recoverable (assuming the EUR 227 threshold is exceeded).

In November 2020 the Supreme Court re-confirmed this. Only if the payment of accommodation costs is in the interests of the company (for example, because the employer cannot find any foreign temporary workers and the foreign temporary workers will not come to the Netherlands unless accommodation is arranged), will the DED not apply and the VAT on the accommodation costs is deductible. This is because there is a special circumstance that forces the employer to incur such costs in the interests of the company. The business interests of the employer thus carry more weight than the private interests of the temporary workers.

The judgment rendered by the Supreme Court in November 2020 means that there now appears to be a heavier burden of proof for the recoverability of VAT on the provision of hotel accommodation to employees on business trips. After all, according to the Supreme Court the employer must convincingly demonstrate that the interests of the company require these costs to be incurred. In addition, the VAT on food and drink that is consumed as end-user in a hospitality establishment is non-recoverable anyway. Different rules may apply if this occurs abroad.

### **Christmas gifts**

The provision of Christmas gifts to employees is regarded as a staff benefit. This means that the input VAT on the purchase of the Christmas gifts is recoverable, unless the total benefit exceeds EUR 227 per employee per annum.

### **Laptop, tablet**

In our view, employers do not have to make a DED adjustment for laptops or tablets made available to employees for work purposes only, i.e. no private use is permitted. If private use of the laptop or tablet is permitted, a value will have to be given to the salary in kind component in order to determine the amount of the DED adjustment. If it is difficult to determine the private use component, we recommend that agreement be reached on this point with the Dutch tax authorities.

### **Outplacement**

The costs incurred by an employer for outplacement are regarded as having been made entirely for business reasons. The employer can recover the VAT on these costs.

### **Public transport travel by staff**

The DED does not apply to public transport used for business-related travel (thus not commuting). The Deputy Minister has approved that employers are entitled to recover input VAT if employees use public transport for business-related travel and use a public transport pass supplied by the employer for this. To be entitled to recover input VAT, the employer must possess a regular settlement statement from the transport provider showing that the employer pays the transport provider directly.

### **Parking spaces**

The provision of parking spaces is regarded as business-related. As such, no DED adjustment has to be made.

### **Pension Plan**

The setting up of a staff pension plan, whether the company manages it itself or by means of the incorporation of a separate legal and tax entity, does not fall under the DED.

### **Kilometer allowance**

Employers often pay a kilometer allowance to employees who use their own car for work. In such cases, it is not possible to recover the input VAT.

### **Sky boxes**

Making sky boxes or other seats at sport events available to staff or clients contains a private component, so that the DED must, in principle, be applied. In June 2018 the Supreme Court ruled on the recoverability of VAT on business seats at a football stadium. Insofar as the seats were used by staff, there was in principle no input VAT recovery right under the DED, unless the attendance of staff at the games was in the interests of the business. Insofar as the seats were used for clients, there is, in principle, a right to recover input VAT. Please note that this is otherwise if the clients have a limited input VAT recovery right (i.e. less than 30%). It is therefore important that the VAT taxable person properly monitors the VAT status of their clients when making sky boxes available and that they keep a record of which employees and clients use the sky box and when.

### **Sport and relaxation**

This category refers to the making available of a sports facility (company football competition, gym, etc.) or staff non-business excursions and outings. The VAT on the costs incurred for this is also non-recoverable if the total benefit per employee per annum exceeds the EUR 227 threshold.

### **Telephone, Smartphone**

According to the Ministry of Finance, the VAT on employee landline telephone subscriptions that are taken out in the name of the employer is not recoverable, because the service is not supplied to the employer. We consider this to be debatable and a good case could be made for arguing that the employer should be able to recover the VAT. Insofar as the telephone subscription is also used privately, the DED applies. If it is difficult to determine the private use component, we recommend that agreement be reached on this point with the Dutch tax authorities.

According to the Ministry of Finance, an employer is entitled to recover the input VAT on mobile phones made available to employees to the extent they are not used for private purposes. In practice, it is often very difficult to determine the private use component. If this is the case and the private use is considerable, it may be possible to reach agreement with the tax inspector on how this should be dealt with.

## Moving expenses

If employees have to relocate solely for their work and the invoices from the moving companies are made out in the name of the employer, the VAT may be recoverable. However, if the relocation was at the employee's initiative, then the DED applies.

## The provision of staff facilities for working from home

Various COVID-19 measures introduced by the government, including the advice to work from home as much as possible, were in effect through to the beginning of 2022. As a result of these COVID-19 measures you may have provided extra benefits to your employees for working from home. Providing employees with home office setups is, in principle, business-motivated. This means that the VAT on these costs may be recovered on the basis of the general recovery right (pro rata). However, insofar as employees can also use the home office for private purposes, there is a benefit to the employees (in the form of the payment of salary in kind). This would mean that under the DED the previously received VAT recovery must be (partly) adjusted. In light of the special situation regarding COVID-19, it could be argued that with regard to the provision of home office setups no DED adjustment has to be made. Such an adjustment may be disregarded if the provision of home office setups is the result of a "special circumstance", so that the employer was forced to provide these workplaces. In that case, the private benefit to employees is subordinate to the interests of the company.

Post-COVID 19, many employees are still spending part of their workweek working from home. However, employers now feel less inclined to contribute to this. Depending on the facts and circumstances, the extent to which the DED applies to the provision of staff facilities for working from home should be examined.

We recommend that you contact your advisor if you provide items to employees for working from home.

## Recognition and reward programs

The Court of Justice of the European Union (CJEU) recently ruled on the VAT consequences of the free distribution of vouchers by an employer to its employees as part of a recognition and reward program. Although the case does not relate to the DED but to the deemed supply of provisions for purposes other than for business purposes, this case may also be relevant for the application of the DED.

According to the CJEU, in the case in question there were no provisions for purposes other than the employer's business, because the vouchers were intended to raise the performance of the employees and thus improve the company's profitability. The resulting individual benefit for the employees was only incidental to the business purposes served by the provision. The CJEU took into account the fact that the employees had no guarantee that they would actually receive the vouchers (these could only be awarded on the recommendation of other employees of the company) and that the criteria for awarding the vouchers was strictly work-related.

If this can be extended to the DED, it may mean that a DED adjustment can be omitted for such provisions, because the main reason for the provisions is that it is in interests of the employer to provide them and the individual benefit for the employee is subordinate to that.

If you apply or would like to introduce such recognition and reward programs, please contact your Meijburg advisor.

## STEP 7

# Cafeteria scheme adjustment

The flowchart outlines the methodology of adjustments that may be made when making provisions to staff. Step 7 and Step 8 further explain the calculations in the flowchart. In line with the methodology of the DED, what first needs to be determined is whether the benefit per employee under the cafeteria scheme exceeds EUR 227. We have used the example with 850 employees in the flowchart for the calculations. The theoretical background to this calculation is explained in Step 5.

### Calculating whether food and drink were provided too cheaply

1. Purchase costs (excluding VAT) of food and drink or the raw materials used therein (excluding purchases of tobacco products)	€ 171.000
2. Fixed 25% markup	€ 42.750 +
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3. Theoretical cost price	€ 213.750
4. Actual turnover	€ 0 -/-
5. Difference (positive/negative)	€ 213.750

The purchase costs for food and drink imbibed by non-staff members fall outside the cafeteria scheme. In the flowchart we have used as example a percentage of 5%. In practice, the percentage may be more or less than this, depending on the precise facts and circumstances.

### Calculating the benefit per employee

€ 213.750	
<hr/>	
850	= € 251

The VAT recovered will have to be adjusted if the total benefit per employee exceeds EUR 227 per annum. In the example, it has been established that the food and drink benefit per employee exceeds EUR 227. The adjustment amounts to 9% of the difference between the theoretical turnover and the actual turnover:  $9\% \times \text{EUR } 213,750 = \text{EUR } 19,238$ . In Step 8 it must then be established whether an adjustment has to be made for the other benefits.

Based on the above calculation method, it is also possible that the food and drink benefit per employee amounts to less than EUR 227 per annum. However, an adjustment may still have to be made for the purposes of the DED. If the total benefit per employee (provision of food and drink (Step 5) + other benefits (Step 6) exceeds EUR 227, then the adjustment for the restaurant provisions will be 9% of the difference between the theoretical turnover and the actual turnover.

If the total benefits per employee (provision of food and drink (Step 5) + other benefits (Step 6)) are less than EUR 227 per annum, no adjustment has to be made. In that case, you do not have to go to Step 8; you have now completed the DED calculation.

## STEP 8

# Adjustment for other benefits

Step 8 establishes the total other benefits per employee. These benefits can be calculated in different ways. We have used the example with 850 employees in the flowchart for the calculations. As shown in the flowchart, the personnel group is made up of three categories. After all, not all employees receive each benefit. A personnel group can also consist of more or fewer categories. In addition, there are different types of categories (e.g. position etc.).

The other benefits in Step 6 are allocated to the personnel categories. In the example, all employees receive the following provisions: a Christmas gift, a staff party, gifts / cards / flowers and team outings. The costs of this are EUR 101,250. This means that the benefits per employee, in principle, amount to EUR 119.

Please note: these provisions are also for the benefit of the employees in personnel group A and B.

All employees (850)	€ 119
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In addition to these provisions, employees in personnel group A 'sporters' also make use of a sport subscription. The costs of this are EUR 417 per year. The total benefit for the employees in this category is thus EUR 119 + EUR 416 = EUR 536.

Sporters (180)	€ 536
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In addition to the provisions made available to all employees, the employees in personnel group B 'employees celebrating an employment anniversary' receive a gift on the anniversary of their employment. The costs of this are on average EUR 800 per employee celebrating an employment anniversary. The total benefit for the employees in this category is thus EUR 119 + EUR 800 = EUR 919.

Employees celebrating an employment anniversary (25)	€ 919
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The VAT recovered will have to be adjusted if the total benefit per employee exceeds EUR 227 per annum. In the example, this is the case for personnel group A and B. Employees without a sport subscription or an anniversary gift remain under the threshold of EUR 227.

The adjustment in this example is twofold:

1. The VAT on the provisions to all employees is adjusted insofar as it relates to employees in personnel group A and B. The adjustment is:

$$\frac{180 + 25}{850} \times \text{VAT on the total provisions of EUR 101,250}$$

2. The VAT on the provisions to personnel group A and B is adjusted. The adjustment amounts to the VAT on the total provisions of EUR 75,000 and EUR 20,000.

This calculation corrects the VAT previously recovered insofar as it relates to the provisions to employees in personnel group A and B. If the benefit to the employees in personnel group A is less than EUR 227, the adjustment will be as follows:

1. The VAT on the provisions to all employees is adjusted insofar as it relates to employees in personnel group B.

The adjustment is:

$$\frac{25}{850} \times \text{VAT on the total provisions of EUR 101,250}$$

2. The VAT on the provisions to personnel group B is adjusted. The adjustment amounts to the VAT on the total provisions of EUR 20,000.

To avoid any doubt: no adjustment is made if the benefit for all employees remains under the threshold of EUR 227.



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