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E 4 Informal Capital Ruling**NL***Conditions Attached*

This ruling practice is based on Supreme Court decisions of 3 April 1957 (BNB 1957/165) and 31 May 1978 (BNB 1978/252) where the Dutch Tax Administration was ordered to accept the informal capital concept in respect of interest free loans between related parties. The ruling may be granted to entities liable to Dutch taxation and it is valid for a period of 4 years (renewable).

Under Netherlands tax law formal contributions to, or withdrawals from, equity capital do not constitute taxable profit. Similarly, informal contributions to, or withdrawals from, a Dutch company's equity capital are not contributing to or deductible from taxable corporate income. The informal capital ruling is concerned with interest free loans obtained from the parent company. Such a ruling ascertains the amount of informal capital contribution.

A combination of a cost-plus ruling and an informal capital ruling is not possible. Where there are separate, different activities involving one taxpayer, one activity might require a cost-plus approach, the other an informal capital approach.

Tax Benefits

The taxable profit of the holder of the informal capital ruling is adjusted by the amount of the informal capital contribution, i.e. the ruling allows a deduction for deemed payments, for the most part, of interest or rent. The informal capital concept might also apply to other items (for example to the transfer of intangible assets such as goodwill). This in respect of benefits provided by related companies at less than arm's length prices. The adjusted profit is taxed at the standard corporate income tax rate of 35%. The informal capital contribution is subject to a capital tax at a rate of 1%.

In accordance with the general principle outlined above, under Netherlands tax law the taxable profit of the related party that had made the informal capital contribution, is adjusted with a corresponding amount. In cross-border situations a corresponding adjustment of the taxable profit will depend on the system of the country involved.