DENMARK

Questionnaire on the Implementation of the HTVI Approach

	QUESTION	RESPONSE
1	**Has your country adopted the hard-to-value intangibles ("HTVI") approach as defined in Chapter VI of the TPG? If so, under what legal basis?**	The arm's length principle in the Danish legislation is contained in the Tax Assessment Act, Section 2. There is also a explicit reference in the explanatory memoranda (preparatory legislative work) to the arm's length principle as contained and described in the OECD Transfer Pricing Guidelines. Hence, in Denmark the arm's length principle in domestic legislation is is interpreted according to the arm's length principle contained and described in the OECD Transfer Pricing Guidelines. Updates to the OECD Transfer Pricing Guidelines are not separately implemented in the Danish legislation but applied on a dynamic basis for the purposes of interpreting the arm´s length principle. The HTVI approach as defined in Chapter VI of the OECD Transfer Pricing Guidelines is part of the arm's length principle and therefore applicable in Denmark.
2	**If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?**	Denmark applies the HTVI approach under the conditions described in Chapter VI of the OECD Transfer Pricing Guidelines and the Annex. The HTVI guidance is targeted at taxpayers' misuse of information asymmetry. Misuse implies that relevant information regarding the value of the intangibles has been withheld from the tax administration to reduce the overall tax burden of the MNE. Hence, the HTVI provisions can generally only be applied with the effect of increasing the overall taxation of the MNE group.
3	**Are transactions falling within the scope of the HTVI approach subject to a transfer pricing analysis differing from the one established in Chapter I and VI, or to other compliance requirements specifically applicable to transfer prices (e.g. domestic anti-abuse rules)?**	In Denmark the analysis of HTVI transactions does not differ from the analysis established in Chapter I and VI of the OECD Transfer Pricing Guidelines. Depending on the facts and circumstances HTVI transfers could be subject to regulations under the GAAR provision in the Danish Tax Assessment Act, section 3.
4	**What is the statute of limitations applicable to transactions falling within the scope of the HTVI approach in your legislation? Does this statute of limitations differ from those applicable to other transactions?**	The statute of limitations for controlled transactions is 6 years in Denmark. However, where information in gross negligence has been withheld from the tax authorities the statute of limitation can be extended.

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5	**Can taxpayers request a bilateral or multilateral advance pricing agreement ("APA") for transactions falling within the scope of the HTVI approach under your legislation?**	Denmark does not have specific legislation on advance pricing agreements for HTVI transactions. Bilateral or multilateral APAs can be requested under the general terms and conditions in Danish double tax treaties.
6	**What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of tax administrators, internal circulars/informative notes)?**	Transfer pricing regulations and practices in Denmark are described in the Danish Customs and Tax Administrations Legal Guidance (DJV). The Legal Guidance is based on and fully aligned with the guidance provided in the TPG. Danish tax auditors are educated and continuously updated in the interpretation and application of the arm's length principle as described in the OECD Transfer Pricing Guidelines. Furthermore, new cases are discussed and approved of by a Transfer Pricing Steering Group and later reviewed by either the Competent Authority and/or Legal Office depending on the following proceedings.
7	**Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?**	There is no special statute of limitations for HTVI in Denmark.
8	**Does your domestic legislation or administrative practice allow the tax administration to make corresponding adjustments under the HTVI approach in open years for closed years?**	Corresponding adjustments can be allowed for closed years only if the Danish competent authority agrees with the primary adjustment.
9	**Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?**	This would not be a typical scenario but multiple adjustments are possible under the guidance in Chapter I and VI of the OECD Transfer Pricing Guidelines.

For further information, please see http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profiles.htm