

AUSTRALIA

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?	Australia has adopted the HTVI approach as defined in Chapter VI of the OECD Transfer Pricing Guidelines. Australia’s transfer pricing legislation, Division 815 of the Income Tax Assessment Act 1997, specifically provides that for the purposes of determining the effect the legislation has in relation to an entity, the arm’s length conditions should be identified so as best to achieve consistency with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations by the Council of the Organisation for Economic Cooperation and Development and last amended on 10 July 2017.
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	See response to Question 1. Australia has not issued any supplementary guidance material.
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)?	Australia’s approach to applying the arm’s length principle for cross-border conditions between entities is outlined in Australia’s transfer pricing legislation. As such, the determination of arm’s length conditions falling within the scope of HTVIs are conducted in accordance with these rules and referenced guidance materials (see response to question 1). All transactions are subject to the general anti avoidance provisions which is contained in Part IVA of the Income Tax Assessment Act 1936.
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?	Under Subdivision 815-B the amendment of an assessment of an entity for an income year is possible if: <ul style="list-style-type: none"> a) the amendment is made within 7 years after the day on which the Commissioner gives notice of the assessment to the entity; and b) the amendment is made for the purpose of giving effect to section 815- 115 (Substitution of arm’s length conditions). <p>The amendment of an assessment is possible at any time for the purpose of giving effect to section 815-145 (consequential adjustments).</p> <p>Ordinarily, the statute of limitations is 4 years for amendments to an income tax assessment, except where there has been fraud or evasion or otherwise specified in the legislation, e.g. Division 815 described above.</p>

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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?	Australia does not exclude transactions falling within the scope of the HTVI approach from APAs as long as the taxpayer meets the requirements to enter into an APA.
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)?	The determination of arm’s length conditions falling within the scope of HTVIs are conducted in accordance with Australia’s transfer pricing rules, including the statute of limitations therein and the referenced guidance materials (see response to questions 1 and 4).
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	See response to Question 6.
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?	See response to Question 6.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	See response to Question 6.

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