AUSTRIA

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?**	In general, Austria applies the OECD Transfer Pricing Guidelines in its latest version. Accordingly, the new wording on HTVI in Chapter VI will find its way into administrative practice. Therefore, it is not necessary to implement the HTVI approach into Austrian domestic law. Nevertheless, we are currently updating the Austrian Transfer Pricing Guidelines (i.e. a decree of the Austrian Ministry of Finance) and we thereupon evaluate to explicitly refer to the OECD guidance on HTVI and potentially give further guidance on its application in Austria.
2	**If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?**	There are no specific conditions for the application (other than the conditions set forth in the OECD Transfer Pricing Guidelines).
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)?**	No.
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 general statute of limitations applies to transactions falling within the scope of the HTVI approach. The absolute statute of limitations is 10 years from when the taxable event occurred.
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?**	Yes. There are no restrictions specific to HTVIs when requesting an APA.
6	**What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of**	Paragraph 6.188 of the OECD Transfer Pricing Guidelines applies, which states that the use of hindsight shall be avoided. No additional measures were introduced in Austria. The HTVI approach may also be included in the training of tax auditors so that correct application of the approach is ensured.

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	tax administrators, internal circulars/informative notes)?	
7	**Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?**	As a general rule (not specific to HTVIs), it is not possible to make transfer pricing adjustments in open years for closed years.
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?**	If the corresponding adjustment results from an agreement reached under a mutual agreement pricedure, the domestic statutes of limitation are overridden. Otherwise, the same principles apply as set forth under question #7.
9	**Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?**	In Austria, transfer pricing adjustments by the tax administration are generally based on a procedural rule which requires that new evidence has occurred in the course of the audit. Assuming that ex post evidence for one single HTVI transaction only occurs once, only one transfer pricing adjustment would be possible.

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