

BELGIUM

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?	Yes. The Corporate Income Tax, Article 185 §2, contains a global description of the transfer pricing principle.
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	There are no special conditions. Belgium follows 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 normal statute of limitations is applicable. Consequently, there are no differences with those applicable to other transactions.
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.
6	What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of	During the internal training, the attention of the auditors is drawn to the difference between the application of the HTVI principle and the use of hindsight.

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	tax administrators, internal circulars/informative notes)?	Belgium has also published a circular letter 2020/C/35 on 25.02.2020 with guidance about transfer pricing in which the points 150-163 explain the principles about the HTVI. The text of circular letter 2020/C/35 can be found in French in the following link: https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_private/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-corporate-income-tax/25aa2105-24d3-4b13-89dd-2f9ba7db7e63
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	It is not yet possible to make 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?	In principle yes. In line with article 9 § 2 of the Model Tax Convention on Income and on Capital, Belgium has in its domestic law article 185 § 2 ITC 92 which allows for a corresponding adjustments.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	Belgium tries to avoid this approach. However, in certain situations, several adjustments are possible as long as the adjustments are made within the statute of limitations.

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