

IRELAND

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?	<p>Yes, Ireland has adopted the HTVI approach.</p> <p>The legal basis is Section 835D of the Taxes Consolidation Act 1997 (as substituted by section 27 of the Finance Act 2019) which provides that Ireland’s transfer pricing rules are construed in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 supplemented by certain guidance, including the Guidance for Tax Administrations on the Application of the Approach to Hard-To-Value Intangibles, published by the OECD in June 2018. The afore-mentioned legislation applies for chargeable periods commencing on or after 1 January 2020 and, in respect of claims for capital allowances, where the related capital expenditure is incurred on or after 1 January 2020.</p>
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	There are no special conditions. The HTVI approach is applied in accordance with 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?	Generally, where a taxpayer has filed a return and made a full and true disclosure of all material facts necessary for the making of an assessment for a particular accounting period, the statute of limitations is 4 years from the end of the accounting period in which the tax return is filed (Section 959AA Taxes Consolidation Act 1997). The same statute of limitations applies to HTVI transactions as applies to other transactions. In cases involving fraud or neglect by a taxpayer, the above-mentioned statute of limitations does not apply and an assessment may be made or amended, at any time, by Irish Revenue (Section 959AD Taxes Consolidation Act 1997).

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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?	Yes, there are no specific restrictions for APA requests relating to HTVI.
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)?	Avoiding the use of hindsight is covered as part of the training provided to officers on the area of HTVI.
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	No.
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?	Yes, if there is a relevant double tax agreement (“DTA”) in place, a corresponding adjustment will be allowed (e.g. under a mutual agreement procedure), in accordance with the provisions of the DTA, to the extent that the adjustment is considered arm’s length.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	There are no specific provisions in domestic legislation which prevent several adjustments being made. However, adjustments must generally be made within the statute of limitations period described in the answer to question no. 4 above.

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