

LUXEMBOURG

Questionnaire on the Implementation of the HTVI Approach

| | QUESTION | RESPONSE |
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| 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? | Luxembourg has at this stage introduced into national legislation the general principles described in the Chapters I – III of the OECD Transfer Pricing Guidelines 2017. No specific guidelines have been implemented so far on the remaining chapters of the OECD Transfer Pricing Guidelines. Therefore, the HTVI approach defined in Chapter VI is to be considered as not implemented in domestic legislation. Nonetheless, the general provisions of Chapters I-III can be used for audit purposes with regard to transactions on intangibles. |
| 2 | If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach? | Not applicable. |
| 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)? | Not applicable. |
| 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? | Not applicable. |
| 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? | Not applicable. |
| 6 | What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of | The use of hindsight by tax authorities for justifying adjustments is limited by the burden of proof. Tax authorities need to be able to demonstrate that the tax payer was in possession (or that there is sufficient evidence that the taxpayer must |

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| | tax administrators, internal circulars/informative notes)? | have been in possession) of the relevant information at the moment the related party transaction was executed but that the information was not taken into consideration during the price setting process. |
| 7 | Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years? | Not applicable. |
| 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? | Not applicable. |
| 9 | Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach? | Not applicable. |

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