NORWAY

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?**	The HTVI approach of chapter VI of the OECD Transfer Pricing Guidelines has not been adopted in an explicit manner. However, the arm's length principle as such, is implemented through Section 13-1 of the Tax Act. This provision has a direct and general reference to the OECD Transfer Pricing Guidelines, stating that due regard shall be had to the guidelines when evaluating whether a taxpayer's income has been reduced as the result of a direct or indirect community of interest with another individual, company or entity, and when making an appropriate adjustment. Through this reference in domestic law to the OECD Transfer Pricing Guidelines, the HTVI approach is implemented in Norway and may be applied by Norwegian tax authorities in conformity with the guidance in the OECD Transfer Pricing Guidelines.
2	**If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?**	There are no special conditions to be met for the application of the HTVI-approach, beyond the general terms related to the application of the arm's length principle, and 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)?**	There are no formal requirements demanding that transactions falling within the scope of the HTVI approach should be subject to a transfer pricing analysis different from the normal procedure established in Chapters I and VI of the OECD Transfer Pricing Guidelines, or to other specific compliance requirements. That said, once it is established through an audit that a transaction meets the criteria to apply the HTVI approach, special attention will be made to evaluate the chosen pricing arrangement and its assumptions. It is expected that the companies have exhaustive explanations regarding relevant factors as part of their transfer pricing documentations.
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 statute of limitations in cases falling within the scope of the HTVI approach follows the ordinary statutes of limitation as prescribed in the Norwegian Tax Administration Act, Section 12-6. The normal time frame allowed for adjustments is five years, calculated from the end of the relevant taxation period. In situations where there is a basis for additional tax on the grounds of intent or culpable negligence, the statute of limitation is extended to ten years.
5	**Can taxpayers request a bilateral or multilateral advance pricing agreement (“APA”) for transactions**	Yes.

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	falling within the scope of the HTVI approach under your legislation?	
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 Norwegian tax administration has a constant focus on improving the skills and qualifications of the employees involved in transfer pricing audits, and as such, much of this internal and external training is believed to be of relevance also for cases concerning HTVI.
7	**Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?**	No, as a general rule it is not allowed under Norwegian law to make adjustments under the HTVI approach 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?**	No. However, under a mutual agreement procedure, any agreement reached could be implemented notwithstanding any domestic time limits.
9	**Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?**	In principle, a prior adjustment could be altered by a new decision, as long as it is within the statute of limitation. The mere fact that the assumptions underlying the first adjustment proved to be wrong, will however, be a clear indication of the difficulties of making proper assessments, and must be considered when establishing what was reasonably foreseeable at the time of the transaction.

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