PORTUGAL

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?**	No, Portugal has not yet expressly adopted the HTVI approach as defined in Chapter VI of the OECD Transfer Pricing Guidelines. Therefore, the majority of the questions for publication cannot be linearly answered. Currently, the Portuguese Parliament is considering a proposal to amend the Portuguese corporate income tax code that will allow amending the national secondary legislation on transfer pricing. Under this last mentioned amendment the terms in which the HTVI approach needs to be expressly adopted in our legal framework will be evaluated. Having said that, the Portuguese legislation contains a reference to the OECD Transfer Pricing Guidelines as a source of supplementary guidance in the application of the arm's length principle, particularly in what concerns complex technical issues or in case of omissions in the domestic transfer pricing regime. In consequence, and although it is not expressly adopted in the national legislation, there is also no impediment to the application of the HTVI approach, as defined in Chapter VI of the OECD Transfer Pricing Guidelines.
2	**If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?**	See answer to question no. 1.
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)?**	See answer to question no. 1.
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?**	Considering the answer to question no. 1, the HTVI approach, as described in Chapter VI of the OECD Transfer Pricing Guidelines. Could be applied within the statute of limitations period of 4 years.

	QUESTION	RESPONSE
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?**	Considering the answer to question no. 1, there is no impediment to the request of a bilateral or multilateral advance pricing agreement for transactions falling within the scope of the HTVI approach.
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)?**	See answer to question no. 1.
7	**Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?**	See answer to question no. 1.
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?**	See answer to question no. 1.
9	**Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?**	See answer to question no. 1.

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