

UNITED KINGDOM

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 UK has adopted the HTVI approach via a requirement within the UK’s transfer pricing legislation that it be interpreted in accordance with Article 9 of the OECD Model Tax Convention and 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 specific conditions beyond those detailed within the BEPS Actions 8-10 Report and 2017 OECD Transfer Pricing Guidelines. The UK has always considered that it can reasonably question the appropriateness of forecasts used in valuing intangibles and the pricing structure used in respect of transactions involving intangibles in accordance with the guidance provided in Paragraphs 6.28 to 6.35 of the 1995 and 2010 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 standard statute of limitations which applies to all tax returns also applies to HTVI transactions. This allows an assessment of tax to be made on a taxpayer, following a discovery that their return is incorrect, up to 4 years after the end of the return period in any case, up to 6 years after the end of the return period where the return is incorrect due to careless behaviour by the taxpayer and up to 20 years after the end of the return period where the return is incorrect as a result of deliberate behaviour by the taxpayer.
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 is no specific restriction which precludes taxpayers from requesting advance pricing agreements in respect of transactions falling within the scope of the HTVI approach.

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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 UK does not consider that the questioning of the reasonableness of forecasts used in valuing an intangible at the time of a transaction because of significant variations between those forecasts and the subsequent actual results represents use of hindsight.
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	No. The same restrictions upon re-opening closed years apply equally to transactions involving HTVIs as they do to any other transactions. There is no provision for making adjustments for otherwise closed years within open 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. The same restrictions upon re-opening closed years apply equally to transactions involving HTVIs as they do to any other transactions. There is no provision for making adjustments for otherwise closed years within open years. The UK's legislation does allow for corresponding adjustments to be made in the relevant closed years to which those adjustments relate where an agreement is reached under the Mutual Agreement Procedure within a Treaty. This does not, however, depend upon the adjustment being made under the HTVI approach.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	Yes, it is possible to make several adjustments in respect of one HTVI transaction should new information become available which meets the requirements for a "discovery".

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