

# CHILE

## Questionnaire on the Implementation of the HTVI Approach

	QUESTION	RESPONSE
1	<b>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?</b>	Chile has not yet used the HTVI approach as defined in Chapter VI of the OECD Transfer Pricing Guidelines. Nevertheless, it is considered that domestic legislation does not restrict its application.
2	<b>If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?</b>	As stated in the previous question, Chile has not yet applied the HTVI approach. However, it could be applied in the context of a transfer pricing audit process carried out by the tax authority  The HTVI approach could also be applied in the context of a corresponding adjustment request or the implementation of a MAP agreement, according to the articles 9 and 25 of the OECD Model Tax Convention to avoid double taxation.
3	<b>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)?</b>	The Chilean transfer pricing legislation does not set any specific methodology for the transfer pricing analysis applicable to transactions that are under the scope of the HTVI approach, and neither sets any specific compliance requirements. Consequently, the provisions of Chapters I and VI of the OECD Transfer Pricing Guidelines are applied.
4	<b>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?</b>	Domestic legislation does not consider any special statute of limitations for transactions that fall into the scope of the HTVI approach.  Article 200 of the Chilean Tax Code establishes that the Tax Administration may settle a tax, review any deficiency in its settlement and revoke taxes to which it gives rise, within the term of three years counted from the expiration of the legal term in which the payment had to be made. The period indicated will be six years for the review of taxes subject to submission, when this has not been presented or the presented one is maliciously false. The indicated periods can be increased up to five months
5	<b>Can taxpayers request a bilateral or multilateral advance pricing agreement (“APA”) for transactions falling within the scope of the HTVI approach under your legislation?</b>	Taxpayers can submit to the Chilean Tax Administration a bilateral or multilateral APA, for every kind of transaction carried out with related parties abroad. According to that, it is possible to conclude that domestic law does not establish any restriction for the taxpayer to submit a bilateral or multilateral APA for HTVI transactions.

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6	<b>What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of tax administrators, internal circulars/informative notes)?</b>	<p>Domestic law and administrative rules establish that the transfer pricing transactions between related parties will be assessed according to what independent parties would have arranged in similar transactions and circumstances, considering the information that the related companies knew at the time of carrying out the transactions, or those that they could have foreseen in a reasonable way.</p> <p>According to that, our local legislation is in line with the methodology for the transfer pricing analysis described in the OECD Transfer Pricing Guidelines, which recommend avoiding the use of hindsight.</p>
7	<b>Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?</b>	<p>The Chilean Transfer Pricing Law does not consider this option.</p>
8	<b>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?</b>	<p>Number 8 of the article 41 E of the Income Tax Law allows taxpayers, previous authorization of the Tax Office, to apply a corresponding adjustment resulting from the adjustment made by a foreign Tax Authority with which Chile has a Taxation Treaty in force. The corresponding adjustment request must be submitted by the local taxpayer in a period of five years from the date that it had to declare in Chile the results from the transactions whose prices, amounts and profitability wants to adjust.</p> <p>Thus, given that this period is longer than the general statute of limitation (i.e. 3 years), in the event that the corresponding adjustment regulated in No. 8 of Article 41 E of the Income tax Law is authorized, this could have effects in closed years.</p> <p>Moreover, when a particular Taxation Agreement contains a clause equivalent to the extract of the article 25 (2) of the OECD Model Agreement, Chile will implement all the agreements reached in a single MAP, regardless the time limitation considered in the domestic law. Therefore, in these circumstances, the Tax Office, for implementation purposes of the agreement reached in a MAP, could carry out a corresponding adjustment under the HTVI approach that be applicable to closed years.</p>
9	<b>Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?</b>	<p>According to Chile's internal legislation, the Chilean tax administration could not make several adjustments to the same transaction, specifically Art. 59 of the Tax Code states that "the SII may not initiate a new request, neither in the same year nor in subsequent periods, with respect to items or events that have already been subject to an examination procedure"</p>

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