

JAPAN

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, Japan has adopted the HTVI approach. The legal basis is tax law (*). (*) Article 66-4 of Act on Special Measures Concerning Taxation, and relevant order, regulation and administrative directive.
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	Briefly, the HTVI approach would be applied to the transactions of specific intangibles, and the main conditions are summarized as follows (*). <ul style="list-style-type: none"> - The intangibles are unique and valuable (therefore, there would be no reliable comparables). - The intangibles are considered to be priced based on the projection of future income (or cash flows) expected to be derived from the transferred intangibles. - The assumptions used in pricing the intangibles (including the above projection of future income or cash flows) are considered highly uncertain. (*) There are also some exemptions for the transactions to which the HTVI approach would not be applied. Basically, the approach as a whole is designed based on the guidance included 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)?	In general, the transactions falling within the scope of the HTVI approach would be subject to the transfer pricing analysis same as for other transactions for transfer pricing purpose.
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?	In general, for the corporate income tax, the statute of limitations for transfer pricing purpose is 6 years (7 years for the business years commencing on or after 1st April 2020). This is not relevant whether the transactions are falling within the scope of the HTVI approach.

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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?	<p>APA procedures in Japan are prescribed in the Administrative Guidelines (Commissioner’s Directive on the Operation of Transfer Pricing and Commissioner’s Directive on the Mutual Agreement Procedure).</p> <p>The Administrative Guidelines allow a taxpayer to request a bilateral or a multilateral APA for a transaction falling within the scope of HTVI approach as well as other types of transactions.</p>
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)?	<p>Domestic legislation prevents the use of hindsight for making adjustments in the HTVI approach, and the Administrative Guideline will also includes highlighting points in applying the HTVI approach, in accordance with such provision.</p> <p>In addition, training for tax auditors is will be provided in order to notify them the new legislation regarding the HTVI, and the relevant new contents of the Administrative Guidelines.</p>
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	No.
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?	In Japan, such approach as described in this question is not necessary because there is de facto no time limit for implementing MAP agreements entailing downward adjustments to be made by Japan under Japan’s tax law.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	There are no specific provisions to the HTVI approach regarding this question.

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