

KOREA

Questionnaire on the Implementation of the HTVI Approach

	QUESTION	RESPONSE
1	<p>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?</p>	<p>Korea has adopted the HTVI approach in the Enforcement Decree of the Adjustment of International Taxes Act in 2019, which contains the following paragraphs on HTVI:</p> <p><i>Article 6-3(6): For those intangible assets that meet the following requirements, the tax authority may assume the transaction price to be inappropriate in cases where there is significant difference, for example the difference between the initial transaction price and ex post assessed price exceeds 20 percent of the transaction price, and may recalculate the arm’s length price based on actual economic outcomes incurred from the HTVI taking into account ex post economic circumstances and transactional situations;</i></p> <ol style="list-style-type: none"> 1. <i>Where no reliable comparables exist at the time of the transaction.</i> 2. <i>Where a projection of future expected benefit from an intangible asset is highly uncertain for cases where an intangible asset is in its development stage thus requiring considerable amount of time to be commercialized or where an intangible asset is highly innovative.</i> <p><i>Article 6-3(7): Paragraph (6) shall not apply if:</i></p> <ol style="list-style-type: none"> 1. <i>The taxpayer proves that the difference between the price determined at the time of transaction and the ex post assessed price of the intangible asset is due to reasons unpredictable at the time of the transaction and that ex ante projections is based on reasonable assumptions at the time of the transaction.</i> 2. <i>The difference between the transaction price and ex post assessed price does not exceed 20 percent of the transaction price.</i> 3. <i>A method for computing the arm’s length price of the intangible asset is agreed in advance through mutual agreement procedure with the competent authority of the Contracting State pursuant to Article6(2) of the Act (Adjustment of International Taxes Act).</i>
2	<p>If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?</p>	<p>Please refer to the answer to Question 1.</p>

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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 statute of limitations applicable to transactions falling within the scope of the HTVI approach is the same as that applicable to other transactions.
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.
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)?	Domestic legislation prevents the use of hindsight. Please refer to the answer to Question 1.
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?	No. However, any agreement reached through mutual agreement procedure could be implemented notwithstanding domestic statute of limitations.

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9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	No.

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