

SWEDEN

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?	<p>Although no specific legislation has been introduced to adopt the HTVI approach, it may nonetheless, in relevant parts, be considered as guidance for the application of the arm’s length principle in Swedish domestic legislation.</p> <p>The legal basis for this is that the arm’s length principle is incorporated into Swedish domestic legislation through Section 14 para 19 of the Swedish Income Tax Act (1999:1229) and the Swedish Supreme Administrative Court has stated that the OECD Transfer Pricing Guidelines (“TPG”) may be used for interpretation of the arm’s length principle (RÅ 1991 ref. 107 and HFD 2016 ref. 45).</p>
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	The HTVI approach may only be used within the arm’s length principle and only in the same manner as other transfer pricing adjustments.
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. The transfer pricing analysis established in Chapter I and Chapter VI of the OECD Transfer Pricing Guidelines still applies.
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?	If incorrect or incomplete information is submitted and that information results in a wrongfully low taxation, the STA may make an adjustment until the end of the sixth year following the accounting year. If the tax issue at stake has been addressed by the tax payer the STA can only make an adjustment until the end of the second year following the accounting year. These statutes of limitations are applicable regardless if the HTVI approach is used or not.
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 are no specific limitations applicable to 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)?	Through courses and continuous education, it is ensured that all relevant officials understand the importance of avoiding hindsight. Furthermore, if the HTVI approach is to be used in an audit, the issue and proposed solution would need to be reviewed by a special group within the STA in order to ensure that the use is unitary and in accordance with the OECD Transfer Pricing Guidelines.
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	No. Transfer pricing adjustments must correct the result of the year that the actual transaction took place.
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 STA does not consider such use of the HTVI approach to be in accordance with the arm's length principle.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	The first two years following the year of the transaction multiple adjustments can be made. After that period multiple adjustments for one transaction can only be made if new essential circumstances have emerged and these circumstances could not have been considered before. No adjustments can be made after the end of the sixth the year following the year of the transaction.

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