

MEXICO

Questionnaire on the Implementation of the HTVI Approach

In Mexico, the legislative proposal on hard-to-value intangibles is currently undergoing the institutional path of revision, analysis and discussion. Afterwards it will go through the corresponding consideration/approval procedures by the relevant legislative bodies. Within this context, the inherent time lag between the drafting and presentation of an initiative of legislation and its approval by the legislative bodies and its entrance into effect makes it unfeasible at this moment to provide an estimate for the timeline of adoption and implementation. The answers provided to this questionnaire should be read considering this context.

	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?	As of today, the HTVI approach is not yet applied in Mexico. However, Mexico is analysing the application of the HTVI approach in line with the guidance in Chapter VI of the OECD Transfer Pricing Guidelines. The legal basis relies in (i) specific modifications to the Mexican Income Tax Law (“MITL”) and the Federal Tax Code (“FTC”) and (ii) the specific mention in the MITL of the contents of the OECD Transfer Pricing Guidelines as interpretive aid in transfer pricing issues in Mexico.
2	If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?	As of today, the HTVI approach is not yet applied in Mexico. However, the conditions underlying its application in the draft proposed bill are in line with the guidance established in paragraphs 6.186 through 6.195 of 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)?	No, transactions falling within the scope of the HTVI approach are not subject to rules outside transfer pricing. As per compliance requirements, taxpayers are required in the draft proposed bill specific information on an annual basis in order for the tax authority to be able to contrast the ex-post results to the ex-ante scenarios and assumptions.
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?	As of today, the HTVI approach is not yet applied in Mexico. With this in mind, the statute of limitations for transactions related to the HTVI approach in the draft proposed bill is equivalent to the time-span of the projections applied by the taxpayer in its HTVI transaction. As such, this statute of limitations may differ from those applicable to other transactions (i.e. 5 years).

	QUESTION	RESPONSE
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, taxpayers can request a bilateral or multilateral advance pricing agreement for transactions falling within the scope of the HTVI approach.
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)?	Risk assessment and audit personnel have been informed and trained on the characteristics of the HTVI approach, including avoiding the use of hindsight, since tax certainty for taxpayers is paramount.
7	Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?	It is not possible to make adjustments in open years for closed 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?	It is not possible to make adjustments in open years for closed years.
9	Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?	It could be possible to recurrently revise the same HTVI transaction on the basis of ex post outcomes that tend to differ from ex ante information or from previously revised outcomes.

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