

SOUTH AFRICA

Questionnaire on the Implementation of the HTVI Approach

| QUESTION | RESPONSE |
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| 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>To date, South Africa has not adopted the HTVI approach as defined in Chapter VI of the OECD Transfer Pricing Guidelines.</p> |
| 2 | <p>If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?</p> <p>See answer to question 1.</p> |
| 3 | <p>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)?</p> <p>See answer to question 1.</p> |
| 4 | <p>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?</p> <p>See answer to question 1.</p> <p>South Africa’s statute of limitations is 3 years and 5 years in the case of self-assessment by the taxpayer. This period can be extended by:</p> <ul style="list-style-type: none"> • an agreement prior to the expiry of the period with the taxpayer; • by prior notice of at least 30 days to the taxpayer by a period approximate to a delay by the taxpayer as a result of failure in providing relevant material requested from the taxpayer or resolving an information entitlement dispute; and • by prior notice of 60 days to the taxpayer by 3 years in the case of transfer pricing matters. <p>The statute of limitations will not apply in cases of fraud, misrepresentation or non-disclosure of material facts.</p> |
| 5 | <p>Can taxpayers request a bilateral or multilateral advance pricing agreement (“APA”) for transactions</p> <p>See answer to question 1.</p> <p>South Africa’s tax legislation currently does not provide for entering into an advance pricing agreement.</p> |

| | QUESTION | RESPONSE |
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| | falling within the scope of the HTVI approach under your legislation? | |
| 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)? | See answer to question 1. Tax administrators have received training on various transfer pricing topics, including the avoidance of the use of hindsight. |
| 7 | Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years? | See answer to question 1. |
| 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? | See answer to question 1. |
| 9 | Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach? | See answer to question 1. |

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