

# THE NETHERLANDS

## Questionnaire on the Implementation of the HTVI Approach

	QUESTION	RESPONSE
1	<p><b>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?</b></p>	<p>Yes, the Netherlands has adopted the approach in the transfer pricing decree in 2018 which contains the following paragraph on HTVI:</p> <p><b>5.3 Hard-to-value intangibles (paragraphs 6.186 to 6.195)</b></p> <p><i>In the case of the transfer or licensing of intangible assets as described in paragraph 6.189 of the OECD Guidelines, where it is difficult for the Tax and Customs Administration to assess the value in relation to the present transactions due to major uncertainties regarding future value development, the Tax and Customs Administration can use the results actually achieved with the relevant intangible assets when assessing the arm’s length nature of the price at the time the transaction occurred. If it turns out that there are major discrepancies between the results achieved and the expectations and resulting forecasts that formed the basis for the price determination at the time of the transaction and that these discrepancies cannot be explained on the basis of facts and circumstances occurring after the date of the price determination, the Tax and Customs Administration can still question the price determined at the time of the transaction with a reference to the results actually achieved. I believe that a major discrepancy is a difference of over 20% compared with the projections that formed the basis for the price originally set. If such a discrepancy occurs only after a period of five years after revenues were realised for the first time with the intangible asset in transactions with independent parties, the intangible assets will not be regarded as ‘hard-to-value intangible assets’ (in accordance with paragraphs 6.186 to 6.195 of the OECD Guidelines).</i></p>
2	<p><b>If your country applies the HTVI approach, what are the conditions for the application of the HTVI approach?</b></p>	<p>See above in par. 5.3 of our 2018 transfer pricing decree.</p>
3	<p><b>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)?</b></p>	<p>No.</p>

	QUESTION	RESPONSE
4	<b>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?</b>	Transactions falling within the scope of the HTVI approach are subject to the same statute of limitations that applies to other transactions.
5	<b>Can taxpayers request a bilateral or multilateral advance pricing agreement (“APA”) for transactions falling within the scope of the HTVI approach under your legislation?</b>	It is possible under the same conditions as with other transfer pricing issues (including valuation issues).
6	<b>What measures exist or approaches have been adopted to avoid the use of hindsight (e.g. training of tax administrators, internal circulars/informative notes)?</b>	The decree is a public decree and in our internal training and discussions we always refer to the problem of the use of hindsight.
7	<b>Is it possible for your tax administration to make adjustments under the HTVI approach in open years for closed years?</b>	No, it is not possible.
8	<b>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?</b>	No, domestic legislation in the Netherlands does not allow it formally.
9	<b>Is it possible for your tax administration to make several adjustments for one single HTVI transaction under the HTVI approach?</b>	This approach should not be possible.

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