



Royal Dutch Shell plc

Ms Vickie Wood
Consultation Responses (Extractive Industries)
Alternatives to Regulation Team
Department of Business, Innovation and Skills
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16th May 2014

Dear Ms Wood,

Shell International Ltd ("*Shell*") welcomes the opportunity to respond to the BIS Consultation on the UK Implementation of the EU Accounting Directive: Chapter 10.

Shell is and remains a strong supporter of transparency and the objectives of chapter 10 of Directive 2013/34/EU ("the Directive"). Shell believes that major extractive companies should be open about how much they pay to governments, and that governments should be transparent in how they use these funds. Accordingly, 2014 is the third year in which Shell has voluntarily published details of payments it has made to governments in the main countries of operation. In 2003 Shell became the first company to publish the royalties, taxes and other payments made to the Nigerian government, with their permission and support. Shell is a founder and board member of the Extractive Industries Transparency Initiative (EITI). We believe that such transparency promotes good government, helping to ensure that the billions of dollars the energy industry pays in tax benefits society as a whole.

Shell's response to the Consultation is without prejudice to the company's position on the legality of the Directive itself. Notwithstanding this position, Shell is keen to participate fully with the Consultation and to use the opportunity provided to make suggestions about how the proposed implementing Regulations can be amended to address the legitimate interests of extractive companies within the boundaries set by the Directive.

Two particular areas where Shell encourages HMG to use its discretion relate to the penalty regime (where Shell encourages HMG to implement a flexible sanctions regime to take account of situations of conflict of law) and the implementation and effective dates of the Regulations (where Shell encourages HMG to delay implementation to allow for greater clarity around equivalence with US legislation).

The Directive is silent on how regulators and reporting companies should deal with situations in which compliance with the UK Regulations would place the company in conflict with the laws or contracts of countries in which the company operates. The Directive does, however, expressly grant member states the discretion to adopt a penalty regime that is 'effective, proportionate and dissuasive'. Shell believes



HMG should apply this discretion to a situation of conflict of law and/or contracts. As currently drafted, the proposed penalty regime does not specifically address such cases and accordingly Shell does not believe that the proposed penalty regime is 'effective, proportionate and dissuasive', as required. It would be iniquitous to place Shell (or any other company) in a situation in which compliance with the obligations arising from the Accounting Directive placed an employee in potential breach of criminal laws in the country in which he or she works. Such a situation would be a matter of the gravest concern to Shell.

Shell believes that HMG should implement the Directive in a manner that would take into account the ability of the reporting company and its directors to obtain and disclose relevant information pursuant to the regulations. In particular, HMG should introduce a flexible sanctions regime, such that, where the ability to disclose is materially hindered as a result of statutory restrictions or other legal obligations in another state, there should be no (or minimal) penalties imposed on the company or its directors under the regulations. To provide certainty to all stakeholders, the test should be objective and clear. For example, in order to satisfy the test, a company and its directors, having reasonably determined that there exist statutory restrictions or other legal obligations vis-à-vis the host government or a National Oil Company which may restrict or prohibit the disclosure of information as required by the regulations, would be required to demonstrate that they have sought permission to disclose the relevant information from the relevant host government or National Oil Company and have not received such permission.

On the importance of equivalence, Shell believes that the all parties' interests in achieving the goal of transparency are best-served by the establishment of a single, global reporting regime. That goal is best-achieved by equivalence of reporting requirements between different jurisdictions. The SEC is considering how best to implement the Dodd-Frank legislation and may make its decision this year. Shell believes that a delay in the UK's implementation pending greater clarity from the SEC on the substance of the new US regime would facilitate equivalence between the UK and the US regimes which benefits the competitiveness of UK-based companies.

Shell refers HMG to the enclosed consultation response form, in which more detail on the above and additional comments are set out. Shell hopes that HMG will find its suggestions to be constructive.

Yours sincerely,

A handwritten signature in blue ink, which appears to read 'Simon Henry', is located below the 'Yours sincerely,' text.

Simon Henry
Chief Financial Officer
Royal Dutch Shell plc