

Consultation on the UK Implementation of the EU Accounting Directive: Chapter 10 Extractive industries reporting

Response form

The closing date for this consultation is 16/05/2014

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Organisation (if applicable): BHP Billiton

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Please return completed forms to:

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 Consultation Responses (Extractive Industries)
 Alternatives to Regulation Team
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 3rd Floor, Spur 2
 1 Victoria St
 London SW1H 0ET

Email: extractivesconsultation@bis.gsi.gov.uk

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
X	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

Extractive Companies

The following information will help us to better understand the impact of this reporting requirement on your company or group of companies:

	Oil	Minerals	Gas	Logging of primary forests
Please indicate in which of the extractive industries your company is engaged (NB: this question is relevant only to those companies actively engaged in extraction and not to those providing support or ancillary services)	X	X	X	

Is your company listed on:	Yes	No
- the London Stock Exchange? - <i>Premium Listing: BHP Billiton PLC</i>	X	
- AIM?		
- another recognised exchange within the EU? (if yes, please state which)		
• another international exchange? - <i>Australian Stock Exchange. Primary Listing: BHP Billiton Ltd</i> - <i>Johannesburg Stock Exchange. Secondary Listing: BHP Billiton PLC</i> - <i>New York Stock Exchange. American Depositary Shares evidenced by American Depositary Receipts (ADRs).</i>	X	
• are any of your subsidiaries listed on an exchange? (If yes, please provide details)		

	Yes	No
Will your company be responsible for the preparation of the consolidated report on payments to governments for your group?	X	

(1) We propose that the first report should be prepared in respect of financial years commencing on or after 1 January 2015 (Para 5.3 – 5.4)

Question 1.1 Do you agree that companies should only be required to produce whole year reports and should not be required to provide a partial year report for the period between the regulations coming into force and 31 December 2014?

☒ Yes ☐ No ☐ Not sure

If no, please indicate:

(a) The minimum period you think should be provided between the regulations coming into force and the date from which reporting of payments made to governments commences:

Minimum period.....

and (b) How information from a partial year report will be used and the benefits that would arise from this approach.

Please provide comments on any difficulties/cost that might arise from requiring a partial report for 2014.

BHP Billiton response: Partial reports by their nature are more difficult and resource intensive to produce as their production is not aligned with complementary reporting cycles that a business undertakes. It would be particularly difficult to do so in relation to the first set of reporting data. Furthermore, as noted in relation to Question 5.1 below, the industry guidance should be made available before the first reporting period commences. The potential benefit of a partial report for the period between the regulations coming into force and 31 December 2014 (or the later date of the company's then current year end) is in any event questionable as it would not create any comparator for future years.

Question 1.2 Do you agree that the first reports should relate to financial years commencing on or after 1 January 2015?

☒ Yes ☐ No ☐ Not sure

If no, please indicate your preference for the date from which reports should be required and provide an explanation for your preference. (Please note that UK-registered large extractives companies must report on in respect of financial years commencing on or after 20 July 2015 i.e. the deadline for transposition of the Directive.)

Preferred date.....

Reasons for preferred date:

(2) We propose that UK registered companies are required to publish the extractive report no later than 11 months after the end of their financial year. (Para 5.5 – 5.7)

Question 2.1 Do you agree that UK registered companies should be allowed a maximum of 11 months after the end of their financial year in which to prepare and publish their extractive reports?

☒ Yes ☐ No ☐ Not sure

BHP Billiton response: As a listed company, BHP Billiton would be obliged to publish the report within 6 months of our year-end.

If no, please indicate:

(a) The maximum period, if any, you think should be permitted after the (financial) year end for companies to prepare and publish their extractive reports:

Maximum period.....

and (b) Indicate the benefits that would arise from this approach below.

Question 2.2 If a shorter period for reporting was imposed, what impact would this have on UK-registered extractives companies?

Question 2.3 If this approach would impose costs on business, please provide an estimate of the costs with an explanation of how these are derived.

Would such costs be recurring costs or transitional costs in the first year only?

☐ Recurring ☐ Transitional ☐ Not sure

(3) Comments are invited on any issues, such as changes to costs or benefits, that may arise from a later transposition deadline for the Transparency Directive. (Para 5.8)

Question 3.1 What issues might arise from a later transposition of the Transparency Directive? Please describe any possible impacts and, if appropriate, provide details of any costs or benefits that might result from this.

BHP Billiton response: While it is understood the transposition of the EU Transparency Directive will create requirements in a substantially similar form to the EU Accounting Directive, in order to provide clarity and certainty for those companies that are affected by both the EU Accounting Directive and EU Transparency Directive regimes (in terms in particular of the timing, method and content of publication and the timing for the implementation of the regimes) we think that the UK proposals for the transposition of the EU Transparency Directive regime should be published as soon as possible, even if its implementation will not be until after the Accounting Directive has been implemented. It is difficult to fully understand what issues may arise from a later transposition given that there has been no consultation to date in relation to the transposition of the Transparency Directive. Also, it is currently not clear whether the industry guidance that is being developed will be able to be relied on for both the EU Accounting Directive and the EU Transparency Directive purposes.

(4) Subsidiaries of overseas-registered companies will be unable to take advantage of the exemption until their parent company fulfils the obligation to report in either the UK or another EU Member State. Comments are invited on any issues that may arise from this approach. Comments are particularly welcome from subsidiaries of overseas registered companies which may not be able to take advantage of this exemption until their parent companies are obliged to produce a consolidated report under rules imposed by another Member State. (Para 5.9 – 5.10)

Question 4.1 Please provide information on any issues that arise for UK-registered subsidiaries of EU-registered companies. If appropriate please provide details of any costs that arise as a consequence of being unable to (fully) exercise the exemption in 2015. (All EU Member States are required to implement the reporting requirements by July 2015.) Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

(5) We propose that extractive reports should be published (filed) electronically with Companies House in a format which complies with industry developed best practice (to be determined as part of the systems development). (Para 5.11 – 5.14)

Question 5.1 Do you agree that it is appropriate that industry should be encouraged to lead in the production of best practice guidance to support the production of extractive reports and encourage consistency?

☒ Yes

☐ No

☐ Not sure

If no, please provide supporting reasons for your view.

BHP Billiton response: The engagement with industry to lead in the production of best practice guidance is an encouraging step to support the production of extractive reports and encourage

consistency within the sector. In order for the guidance to be of substance and to enable companies to rely on it, it is important that it receives some form of approval or endorsement by BIS (in consultation with the EU Commission if necessary). The guidance would ideally be issued in a timely manner to accompany the publication of the final regulations. In particular the definition of "project" in the Accounting Directive is complex and open to a number of different interpretations. In order to provide companies with the certainty and clarity needed to implement the disclosure requirements that apply to them, there needs to be agreed and endorsed guidance on this definition prior to the start of the first financial years to which the reporting requirements will apply.

Question 5.2 Do you agree that reports should be published (filed) electronically with Companies House only i.e. the submission of paper reports is not required or permitted?

☒ Yes ☐ No ☐ Not sure

BHP Billiton response: We would welcome liaison between BIS, Companies House and the industry groups assisting with the guidance on the reporting requirements in order to ensure that any electronic publication requirements issued by Companies House will be workable for companies in practice. It would also be of assistance to listed companies if the format of the report to be filed at Companies House is compatible with the publication requirements for the report under the UK implementation of the Transparency Directive.

If no, please provide supporting reasons for your view.

(6) We propose that the penalty regime for non-compliance with the obligation placed on large extractive companies to prepare and publish annually reports on the payments they make to governments should reflect that in place for failure to prepare and file statutory annual reports.

We welcome views on whether the proposed penalty scheme is effective, proportionate and dissuasive. In particular, we would welcome views on:

- **the imposition of an offence for filing a report containing misleading, false or deceptive information,**
- **on how the penalty regime should apply in cases where external factors affect the preparation of a report or prevent a company from filing a report.**

Question 6.1 Do you agree that it is appropriate for the penalty regime here to reflect that in place for failure to prepare and file statutory annual reports?

☒ Yes ☐ No ☐ Not sure

If no, please indicate your preferred option and provide an explanation for your suggested approach.

Question 6.2 Do you consider that the proposed penalty regime is effective, proportionate and dissuasive?

☐ Yes ☐ No ☒ Not sure

If no, please explain why you do not consider the regime would be effective, proportionate and dissuasive. Please provide any suggestions you may have as to how the regime could be improved.

If your suggestions relate to an existing regime, please provide appropriate references.

BHP Billiton response: The penalty regime in the draft Regulations is similar to that relating to other annual report filing penalty regimes in the Companies Act 2006. However, whereas the offences for other narrative reporting requirements (for example section 415 in relation to directors' reports) require the director to have failed to take reasonable steps to comply, the provision in the draft Regulation appears to reverse the burden of proof by making the director liable unless he proves in defence that he did take reasonable steps. BHP Billiton does not believe offences in relation to reporting by extractive industries should be more onerous than those in relation to annual reports. We therefore also do not agree that there should be an offence relating to the filing of "misleading, false or deceptive" information. The reporting requirements are subject to more uncertainty than those in the annual report, particularly given the uncertainty and judgement issues involved in the key definitions such as "payments" and "projects" and the financial information is not audited, unlike the information in the annual accounts. Accordingly we believe that directors should be afforded similar protection to that set out in section 463 of the Companies Act, namely where they have acted in good faith.

Question 6.3 Are there any special circumstances that the Government should take in to account when determining the penalty regime?

☐ Yes ☒ No ☐ Not sure

If so what are they, and do you have any suggestions about how these might be dealt with within the penalty regime?

Question 6.4 Are there any other issues that the Government should consider in developing the penalty regime?

☐ Yes ☐ No ☐ Not sure

If yes, please provide an explanation and supporting evidence where appropriate.

(7) A copy of the draft regulations implementing Chapter 10 has been included within the consultation document.

Question 7.1 Do you have any comments on the draft regulations included at Annex 4?

☒ Yes ☐ No ☐ Not sure

If yes, please provide details. Please note that the UK does not have the discretion to amend the requirements set out in the Directive. As such comments should relate to matters of understanding or those areas where the UK has discretion in determining an option e.g. the timeframe within which an annual report must be published.

BHP Billiton response: The structure of the definition of 'project' as contained within the draft regulations is unclear - it is not aligned with the structure in the Directive and contains minor but important changes to the wording as contained within the Directive. We believe that the wording of the Directive should be followed. The effectiveness of the report would be reduced if reporting is required that is not aligned and able to be read in conjunction with existing mandated reports produced by companies for their operations and business segments. As mentioned in relation to Question 5.1 the industry produced guidance will need to be able to be relied on by companies to assist in the interpretation of the definitions in the Regulations.

The regulations need to provide clarity about the scope of companies included in the reporting requirements, particularly in a group situation, and this cannot be achieved by the generic use of the word "undertaking" from the Companies Act as currently used in the draft Regulations. There also needs to be clarity either through the Regulations themselves or in the guidance that the consolidation requirements do not include associated companies (which are not "included in the consolidation", as defined in section 474 of the Companies Act) as these are not entities from which the relevant information can be procured.

The exception provided for in Article 44(3) of the Directive has not been provided for in the draft and should be included.

(8) The Government would like to gather information which is directly relevant to UK registered companies on the anticipated costs of implementing this reporting requirement. (Para 7.1)

Question 8.1 We would welcome views on the impacts (costs and benefits) arising on business from this new reporting obligation. It would be particularly helpful if you could provide monetised information relating to any additional costs or benefits you identify. Where possible, please indicate if these additional costs are transitional or recurring costs.

In responding to this question, please note:

- (i) *where a company voluntarily produces a similar or related report already, the costs identified for this purpose should represent only the additional costs necessary to comply with this requirement and not the total cost of production.*
- (ii) BIS is happy to receive information considered to be commercially sensitive separately from the consultation response or, if requested, to remove such information from a response prior to its publication on the consultation website.

BHP Billiton response: Additional costs to BHP Billiton directly related to the UK implementation are difficult to quantify given concurrent reporting requirements of a similar nature already underway in other legislative environments or of a voluntary nature.

There are concerns, however, that if the final implementation requirements within the UK are in excess of similar reporting regimes (e.g. US Dodd Frank s.1504) or voluntary reporting frameworks (e.g. the Extractive Industries Transparency Initiative) that the direct additional costs to BHP Billiton and other companies will prove to be unnecessary. A considered approach, backed up by guidance endorsed by BIS, to the definition of "project" and to the specific subsidiaries and business units to be included in reporting is therefore critical, both to create certainty and practicability when complying, but also to ensure that the costs are proportionate to the benefits of the transparency regime which we fully support.

Question 8.2 Please describe any other issues associated with this requirement that you would like to draw to our attention.

(9) The same reporting requirements apply to listed extractives companies under the amended *Transparency Directive*. The Government would like to gather information which is directly relevant to these companies on the anticipated costs of implementing this reporting requirement.

Question 9.1 Please outline any quantifiable costs and benefits specifically relating to the following issues:

- Economic impact
- Legal implications
- Practical implications
- Competitiveness impact including the position of the UK as a centre for international listings

Economic impacts:

Legal implications:

Practical implications:

Competitiveness impact including the position of the UK as a centre for international listings

(10) The Government would welcome any other comments on the implementation of Chapter 10 within the scope of this consultation

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

BHP Billiton response: Good governance of natural resource wealth for the benefit of a country's citizens is the domain of sovereign governments, to be exercised in the interests of their national development and on behalf of their citizens. BHP Billiton believes that transparency around revenue flows from the extraction of natural resources is an important element in the fight against corruption. To this end, BHP Billiton has been a supporter of the Extractive Industries Transparency Initiative since its inception in 2002. We are pleased to be given the opportunity to support and engage in the consultation process and the implementation of the regulations.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☐

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☐ Yes

☐ No

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