

## 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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Please return completed forms to:

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London SW1H 0ET

Email: [extractivesconsultation@bis.gsi.gov.uk](mailto:extractivesconsultation@bis.gsi.gov.uk)

<b>Yes</b>	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	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)		Aggregates, industrial minerals		

Is your company listed on:	Yes	No
• the London Stock Exchange?		
• AIM?		
• another recognised exchange within the EU? (if yes, please state which .....)		
• another international exchange? (if yes, please state which .....)		
• 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?		

	Micro	Small	Medium	Large
Please indicate the number of subsidiaries within your group that are active in the extractive industries				

**(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.

*Setting up systems to provide reports could be a significant administrative burden for companies in scope. It would be more reasonable to introduce the reporting requirement from January 2015 to enable appropriate preparation. See our response to Question 10.*

**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

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?

*Given the potential complexity of reporting for some businesses in our sector it would be prudent to allow sufficient time to prepare reports. See our response to Question 10*

**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.

**(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.

We understand that guidance may be helpful but are concerned that the development of the Directive, as illustrated in the reporting template example set out in annex 4 of the consultation, does not reflect that businesses involved in UK extraction of construction and industrial minerals may have numerous UK operations. The development of the guidance does not include representatives of these sectors, including only representatives of oil and gas and international mining businesses. Guidance which is appropriate for such businesses may not be appropriate for domestic extraction businesses in the UK.

**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

If no, please provide supporting reasons for your view.

*We understand that electronic filing is the favoured approach but would like to understand the number and size of businesses in scope of the Directive before ruling out the option of paper reports. See also our response to Question 10.*

**(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.

**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?

*At this point we still have significant uncertainties about the detail of information to be supplied in the Reports. Until this is clarified we believe it is too early to agree / disagree with the penalty regime proposals. See our response to Question 10.*

*If the reporting requirements are as detailed as we believe they may be, there should be a reasonable and proportionate approach taken to potentially inadvertent errors in reports which are not intended to wilfully mislead.*

**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.

**(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.

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

*Please refer to comments made under Question 10 to see questions and concerns which could impact on corporate and industry costs of implementing the reporting requirements.*

**(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

*We do not see any economic benefits to the domestic mineral products industry arising from the reporting requirements. In contrast it will impose additional regulatory and administrative costs on businesses. The industry in the UK is subject to comprehensive regulation and public accountability, notably through the various stages of the land use planning process, and the application of the reporting requirements to the sector is unnecessary and disproportionate.*

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

*The UK mineral products industry represented by MPA includes the extraction of aggregates (rock including limestone, granite, sandstone and sand and gravel) for construction purposes, limestone and silica sand for a range of industrial, environmental and agricultural purposes and the extraction of dimension stone.*

*The industry operates over 1,000 quarries in the UK and also extracts sand and gravel from a number of licensed locations on the UK seabed.*

*Businesses operating in the sector include a small number of large companies and in excess of 250 medium and small companies. Companies involved in extraction will often be involved in related activities, for example the manufacturing of cement, ready mixed concrete, concrete products, mortar, asphalt and lime. It is also not uncommon for extractive businesses to have interests in waste, recycling, construction and other commercial activities.*

*As the criteria set for determining if businesses are in scope of the Directive applies to the parent company of the extractive business there is an uncertain but potentially larger number of UK businesses in scope than would be assessed by looking at extractive activities only.*

*Individual extractive operations in the UK mineral products industry will typically be significantly smaller and significantly more numerous than the scale of oil and gas and international mining operations for which the Directive has been designed.*

*We would like to raise particular questions and concerns as follows.*

### **“Project” based reporting**

*The consultation and draft regulations indicate that reporting will be on a project basis, with a project defined as a “single contract, license, lease, concession .....”*

*Extraction of mineral products in the UK is subject to the awarding of planning permissions and regulatory approval for individual quarries. The largest UK business may operate in excess of*

*100 operations with separate planning approvals. Medium sized businesses may operate tens of quarries and small businesses may operate several sites.*

*As a result we would seek clarity on whether it will be required for businesses to provide reports for each extractive site covered by a separate planning permission?*

### ***Payments to Government in scope for reporting***

*The consultation and draft regulations list the range of payments in scope. We would ask for further clarification of these payments, for example:*

*1. Section 2(b) of the draft regulations states that taxes “levied on consumption” are excluded from the scope of reporting. We would ask for confirmation that environmental taxes and levies (for example aggregates levy, landfill tax, energy and climate change measures) are excluded from the scope of reporting.*

*2. Is it intended that the reporting of payments to Government should include all payments made by the parent company, or just those related to extraction?*

*3. If it is intended that payments should only be reported which are related to extraction, how should companies differentiate between extraction and associated activities such as the manufacture of concrete and asphalt?*

*4. Mineral products companies can make a variety of payments to local and national government and regulators which are site based. Such payments can include:*

- The cost of planning applications*
- Payments to local planning authorities for discussions relating to potential planning applications*
- Payments to local planning authorities for site visits to monitor and regulate operating conditions required with planning approvals*
- Payments to agencies such as the Environment Agency and Health and Safety Executive required for regulatory purposes*
- Financial bonds required by planning authorities to cover potential liabilities if the extraction business fails to carry out site restoration in accordance with planning permissions*
- Payments to a local authority or public body to finance the aftercare and management of a restored extraction site*
- Business rates – an element of which are/can be related to site production levels*
- Community Infrastructure Levy*
- Payments to communities which might be administered by a local authority*

*We would welcome clarity on:*

- 1. Whether such payments are required to be reported?*
- 2. If such payments would have to be reported for each site or “project”?*
- 3. If there is a de-minimus level for payment to be in scope for reporting?*
- 4. Whether the cost of all infrastructure improvements ( for example road improvements) carried out as a requirement of planning conditions or other agreements with local/public authorities have to be reported?*

*In view of the proposed penalty regime and associated criminal sanctions for non-compliance it is essential that there is clarity on the payments and detail to be included in company reports.*

*The multi-site activities of many operators suggest that requirements for project based reporting could impose a significant additional industry burden on industry operators.*

*We believe it is essential that there is further dialogue between Government and the industry to cover the issues above and to try and establish a reasonable and proportionate reporting regime which is legally acceptable.*

### **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.

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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