

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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 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	

Is your company listed on:	Yes	No
• the London Stock Exchange?	X	
• AIM?		X
• another recognised exchange within the EU? (if yes, please state which ... Frankfurt Stock Exchange)	X	
• another international exchange? (if yes, please state which ... New York Stock Exchange)	X	
• are any of your subsidiaries listed on an exchange? (If yes, please provide details) BP Prudhoe Bay Royalty Trust – NYSE Other listings relate to downstream entities that aren't involved in extractive activities	X	

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

	Micro	Small	Medium	Large
Please indicate the number of subsidiaries within your group that are active in the extractive industries	Approximately 250, the classification between these categories could not be determined without undertaking a considerable amount of work and would be irrelevant as they are all subsidiaries of a Public Interest Entity			

(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.

Partial year reporting has a significant potential to provide a distorted view of payments made to governments, especially where significant payments covering the current or prior year tax liability or production entitlements are made either within or outside of the partial reporting period. This could lead to a misinterpretation of assumed full year totals e.g. through the pro rata multiplication of a single quarter's payments.

Costs related to the development, deployment and operation of the processes and systems required to collect and prepare the required reports are the same regardless of the reporting period. Given the above weaknesses in partial year reporting it would appear disproportionate to burden those cost on companies in the short term for little benefit.

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: Financial years commencing on or after 1 January 2016, or such later time that would align the reporting in the UK with the equivalent US regime.

Reasons for preferred date: The landscape has changed considerably since the UK gave its commitment to quickly transpose the requirements of Chapter 10 of the EU Accounting Directive into UK law. The European regime was modelled on a US regime that has now been stalled. This will present a significant obstacle to the implementation of the equivalence regime that the UK fought so hard to deliver.

The early transposition of Chapter 10, and in particular the setting of the first reporting period to cover payments made in 2015, create a number of issues for UK companies:

- Transposition of Chapter 10 outside the context of the remainder of the Accounting Directive may introduce technical issues relating to interactions between Chapter 10 and other elements of the directive, for example in relation to consolidated reporting
- Transposition ahead of the Transparency Directive results in different timelines for UK listed companies that are registered in the UK compared to listed companies that registered outside the UK
- Transposition ahead of other EU member states creates an uneven playing field for UK companies relative to companies registered in those other states
- Establishing a first reporting period ahead of the US regime risks introducing competitive harm for UK companies relative to their US competitors and undermine efforts to avoid duplicative reporting for UK companies due to the inability to implement the equivalence mechanism

(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?

-

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.

We expect to file reports for government payment reporting consistent with our current annual financial reporting cycle.

To meet this requirement based on our work to date in support of both the US Dodd Frank government payment reporting and the UK transposition of chapter 10 we would estimate a total cost of approx. \$6.5m to deliver the first filing in the UK. Approximately \$3.5m of this amount relates to the central team to understand and interpret the legislation, and develop the relevant processes and systems. A further \$3m is related to implementation of the process within the various global business locations.

For subsequent reporting periods we estimate the ongoing cost to be of the order of \$2.5m per annum.

These estimates are based on the assumption that reliance can be placed on existing IT systems. Additional costs will be incurred if incremental investment is required on upgrading our systems or investing in a new application.

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.

From a company perspective the transposition of the Transparency Directive at a later date requires additional activities to be conducted to review the Accounting Directive again within the context of the consultation on the Transparency Directive regulations.

(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.

Not Applicable

(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.

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 support the use of industry best practice for the electronic submission of filings to Companies House through a system which is cost effective and meets the requirements of the UK Regulations.

Furthermore, given the complexity of reporting government payments, we anticipate there will be a significant number of questions from Civil Society Organisations and Concerned Citizens related to the reports which are submitted by UK companies. We believe it is therefore important for all the company's data including the accompanying notes to be presented to the public by Companies House as one coherent report. This approach will greatly increase the understanding of the data being reported.

We note that standards such as iXBRL, whilst providing opportunities for detailed analysis and comparison of data for professionals, do not necessarily support the needs of concerned citizens who are unlikely to possess the necessary technical background to utilize them. It is important that Companies House develop an approach that is easy for companies to comply with and for the data to be readily accessible and clearly presented for the benefit of users.

(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.

We do not believe that the penalty regime accurately reflects the difference in the nature and the intended use of government payment reports when compared to statutory annual accounts.

Under Chapter 10, the financial information in the reports is not required to be externally audited, unlike the financial information in the annual accounts, an important point which significantly reduces the on-going cost of compliance with the regulations.

The use of both civil and criminal penalties may mean that companies would consider that the reports should be externally audited on an on-going basis, to provide the necessary assurance (particularly as it is suggested that the directors would have the burden of showing that they had exercised all reasonable care) and reduce the risk that the company, its subsidiaries and its directors are open to either civil penalties or criminal prosecution as a result of an inadvertent or technical breach.

We also note that there is a significant amount of uncertainty in relation to a number of the key definitions which apply to the report (such as the definition of "project" and "payment") making it inappropriate to create a criminal regime in relation to compliance.

The appropriate penalty regime should be a civil penalty against the relevant company, not against its directors.

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.

Please refer to the response to Question 6.1

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?

BPs code of conduct provides the guidance and support on how to conduct our business ethically and in compliance with the Law. Our code represents our commitment to doing the right thing. We respect the world in which we operate, and we are committed to meeting our obligations to the countries and communities in which we do business.

First and foremost, our code requires every employee and officer in every BP wholly-owned entity, and in joint ventures (JVs) to the extent possible and reasonable given BP's level of participation, to comply with applicable regulations and legal requirements of the countries in which we operate.

The Regulations on Government Payments 2014 provide no exemptions or other mechanism to not report payments to governments in countries where there is legislation that prevents the disclosure.

We respect the laws of countries in which we operate and as a matter of principle in line with our code we would not wish the company, its subsidiaries, directors or employees to consciously make a decision to break the law.

Whilst it has been noted by both industry and Civil Society Organisations that currently the vast majority of countries with oil & gas and minerals natural resources do not have specific laws which would prevent disclosure, there is no guarantee this will remain the case as the geo political landscape changes and new natural resource bearing regions of the world are identified.

Where a clear and proven conflict of law arises, the company, its subsidiaries, directors or employees the company and its directors would be required to choose which countries laws to break and potentially open themselves or others up to civil or criminal proceedings, commercial harm, and reputational damage in either in the UK or the country in question. In these specific instances, subject to appropriate evidence and due diligence, we believe that for the penalty regime to be considered proportionate it should provide the flexibility to take into account the

difficult situation that the the company, its subsidiaries, directors or employees company and its directors may be placed.

Companies should be required to provide evidence that laws exist that prohibit the disclosure of payment data and be required to demonstrate that they have sought but failed to secure the permission of the relevant government agency to disclose that information

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.

Accelerated transposition of chapter 10 without the benefit of being able to review the implementation of the directives in other member states, could result in a lack of harmonisation between individual penalty regimes. This could lead to UK companies, their subsidiaries, and their directors being significantly disadvantaged relative to their counterparts in other EU member states. This would therefore have an unfavourable impact on the attractiveness of the UK as a place to do business.

(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.

We have noted a number of technical issues and discrepancies in the regulations in annex 4 in comparison with the original EU Chapter 10 text, a number of which were highlighted in the recent supplementary information document.

1. The definition of the relevant activities as listed in the regulation only relates to Extraction, rather than Prospection, Exploration, Discovery, Development and Extraction
2. In Regulation 7(2), the wording of the regulation does not require the reporting of non-UK registered subsidiaries within the consolidated report
3. The definition of 'project' within Chapter 10 lacks clarity and the transposition into the draft regulation does not fully represent a copy out of the Chapter 10 text. The singular term 'similar legal agreement' has been used rather than the plural version in Chapter 10.

The separation of the reference to 'Such Agreements' in (5) from the rest of the preceding sentence makes it difficult for the reader to appreciate that this only refers to the 'related agreements' in (4). The Industry Best Practice document will need to provide guidance on interpreting this challenging definition.

4. Regulation 4 (4) - The anti-avoidance measure should only apply to the artificial splitting of payments and activities and not to projects which will be subject to interpretation of the definition of the term 'project' by each company.
5. Regulation 8 exemption from duty to prepare a consolidated report - we note that one exception within the accounting directive (copied below) has not been copied into the UK draft regulation

"3. An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments where at least one of the following conditions is fulfilled:

(a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;

(b) extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Directive cannot be obtained without disproportionate expense or undue delay;

(c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

The above exemptions shall apply only if they are also used for the purposes of the consolidated financial statements. "

6. The exemption for subsidiaries of other EU member states that will be covered under a report prepared by their parent company does not appear to have been copied out from Article 42 (2) in Chapter 10.

(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.

Please refer to the response to Question 2.3

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

As noted in the response to question 1.2, the European disclosure regime is modelled on a US regime that might be the subject of considerable change. In addition, the avoidance of duplicative reporting hinges on there being equivalence between the US and European rules. The publication of revised US rules by the SEC would re-establish the framework that would enable an equivalence assessment to be performed comparing the US and European regimes. We therefore encourage a dialogue between UK, US and European Commission officials before the final UK regulations are published in order to achieve consistency between the reporting requirements under both regimes.

(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

As a founding member of the Extractive Industries Transparency Initiative (EITI) and an alternate member of the initiative's board, BP works with governments, non-governmental organizations and international agencies to improve transparency and disclosure of payments to governments.

We have supported governments' efforts towards EITI certification in countries where we operate. We have worked with many countries on implementation of their EITI commitments, including most recently with the US and UK administrations following their decision to join the initiative.

We believe that the comprehensive, multi-stakeholder approach of EITI is the best approach for the extractive industries. The EITI is an inclusive process, involving governments, civil society and companies, that is tailored to fit the local fiscal and legal regimes.

The benefits to companies and investors through the increased accountability and good governance that transparency initiatives bring are realised when all parties operating within a country are engaged with, and committed to, the process.

Under mandatory disclosure regimes such as the EU Accounting Directive the benefits will be limited by the fact that only those companies registered within EU member states will be required to report payments, leaving a significant proportion of extractive industries registered elsewhere unaffected and their payments unreported.

Companies registered in the UK may also be placed at a significant disadvantage to their counterparts outside of the EU and be subject to competitive harm. The proposed project by project reporting when taken in conjunction with other available information could be used to conduct a better assessment of the economic basis under which the company operates its current assets. This information would be beneficial to governments or competitors, when entering into negotiations with the company or bidding against it.

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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