

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

Name: *David McCabe*
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Please return completed forms to:

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 Alternatives to Regulation Team
 Department of Business, Innovation and Skills
 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		

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)		X
• another international exchange? (if yes, please state which)		X
• are any of your subsidiaries listed on an exchange? (If yes, please provide details)		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		~ 3		

(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.

The systems that will need to be put in place will require testing which will take time to undertake, therefore, if the requirement to have this resolved before the end of this year is confirmed the financial and human resource costs of implementation will be greatly increased. Furthermore, we see little benefit in the new system commencing with a partial year of data.

We recognise and commend the UK Governments commitment to this initiative but fear that an earlier implementation as proposed is another case of UK industry being subjected to Gold Platted EU Directive requirements.

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.....20th July 2015

Reasons for preferred date:

As per the requirements of the Directive.

(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.

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.

It would be useful to have clarification regarding the reporting requirements of non-controlled joint ventures.

For example, we are a large 50:50 joint venture working in the extractive industry. Both our 50% shareholders are also part of large organisations working in the extractive industry.

Our preference would be for the joint venture to be required to independently report details of their payments rather than form part of the consolidated reporting obligations of our shareholders as this would create duplicate processes (and associated costs) for us.

(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.

However, it is with regret that we learned from footnote 12 in the consultation document that the UK aggregates sector has not been engaged in this process despite being impacted by the proposals. We would expect to have seen the Mineral Products Association included alongside the Oil & Gas Producers Association and the International Council on Mining and Metals for this purpose.

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.

(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?

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.

(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

Project level reporting

Our business has over 100 extractive sites in the UK (a quarry is likely to be a much smaller operation than a mine). The project level reporting therefore is likely to be more onerous than for a business with say 10 very large sites.

As a result, we have 2 queries relating to the project level reporting requirement:

- 1. We do not believe that the draft legislation is clear in terms of the application of the de minimus reporting requirement. For example, is the de minimus applied at a recipient level (i.e. all payments to one body are below £84,400) or at a project level?*
- 2. Is it possible to consider a de minimus extraction tonnage for a project/site? The implication being that payments for sites where extraction is below that level can be aggregated at an entity level (i.e. still reported but at a more consolidated level).*

Clarification of inclusion of Aggregates levy

We believe greater clarification is required as to whether the reporting of Aggregates levy payments are required and, if so, whether this should be reported at a project or entity level.

Audit requirement

It would be useful to understand whether there any third party assurance requirements for the reports prior to submission. For example, review and sign off by external auditors.

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.

Generally speaking, as an independent UK company with extractive operations only taking place within the UK and therefore associated Government payments from these going exclusively to the UK Government, we are not clear that the ambition of the Directive (to secure revenue for resource rich developing countries), as set out in the introduction and executive summary to the consultation document will be achieved by requiring such organisations as our own to be part of the additional reporting requirements.

Furthermore, it is unclear from the consultation and the aims of the Directive that construction minerals are the target of the reporting requirements. The extractive operations of our business are primarily associated with low value aggregate materials that go to produce construction products and other than a small percentage of the total aggregate produced in the UK which comes from marine sources, the only payments that are made to the UK Government in respect of these are associated with regulatory fees (planning and permitting) and in taxes such as the Aggregates Levy.

Our concern therefore is that the Directive has been designed to create reporting requirements for extractive industries that are very different to our own operations in terms of global scale and revenue generation and therefore the implications of complying with the requirements will be disproportionately impactful upon our business.

Furthermore, because of our domestic focus, none of the benefits listed in the consultation document at 7.1(i) and (ii) are relevant to our business.

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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