



By email to extractivesconsultation@bis.gsi.gov.uk

Vickie Wood
Consultation Responses (Extractive Industries)
Alternatives to Regulation Team
Department of Business, Innovation and Skills
3rd Floor, Spur 2
1 Victoria St
London SW1H 0ET

15 May 2014

Dear Madam,

**Response to the Consultation on the UK Implementation of the EU Accounting Directive,
Chapter 10: Extractive industries reporting**

This is a response on behalf of PricewaterhouseCoopers LLP ("PwC") to the discussion paper "UK Implementation of the EU Accounting Directive: Chapter 10: Extractive industries reporting – Consultation" issued in March 2014.


PwC has long supported well considered tax transparency by business, including appropriate reporting of tax information, recognising the potential value for companies from being open with shareholders and other stakeholders (including Government). Our Total Tax Contribution methodology and our Building Public Trust Awards aim to encourage greater voluntary disclosure of meaningful information on tax.

The benefits of transparency on tax however depend on providing information and not just data, and clearly establishing the purpose and intended use of information. We have a concern that mandatory public disclosure requirements can become a "tick box" exercise rather than enabling a clear articulation of the information which is useful to the reader. Apart from the additional costs involved and the risk of a disproportionate burden being placed on UK registered or listed entities if implementation results in inconsistency internationally, there is also the potential for adverse consequences for companies of putting commercially sensitive data into the public domain.

Our responses to the specific questions raised in the Consultation document are contained in the attached appendix. These are based upon our own experience of reporting obligations in the sector and from discussions with those who will be required to comply with these requirements. In several cases however we have not replied to specific questions as we feel that they would be better answered by companies that are active within the extractive industry.

If it would be helpful to discuss any aspect of this response please do not hesitate to contact either Andrew Packman on 01895 522104 or Mark King on 0207 804 6878

Yours faithfully


Andrew Packman
PwC

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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: Andrew Packman

Organisation (if applicable): PwC

Address: 1 Embankment Place, London, WC2N 6RH

Please return completed forms to:

Vickie Wood
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 1 Victoria St
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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)	N/A	N/A	N/A	N/A

Is your company listed on:	Yes	No
• the London Stock Exchange?		No
• AIM?		No
• another recognised exchange within the EU? (if yes, please state which)		No
• another international exchange? (if yes, please state which)		No
• are any of your subsidiaries listed on an exchange? (If yes, please provide details)		No

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

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

(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

We believe in the importance of high quality reporting and given practical concerns regarding the implementation of the EU Directive, there may be a cost to business and greater potential for error if companies are required to produce partial year reports at short notice.

We also note that a partial year report would not be comparable with other full year reporting during 2014 and also would not be comparable to subsequent whole year reports and therefore increases the likelihood for the data to be misinterpreted and misunderstood by the user.

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.)

We note the commitment of Government to implement quickly the reporting of payments to governments by the extractive industries and therefore the proposal to introduce regulations during 2014 to implement the requirements set out in Chapter 10. The proposal that the first reports should relate to financial years commencing on or after 1 January 2015 is consistent with that commitment as well as being consistent with the anticipated implementation date for the Transparency 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

The proposed timetable provides consistency with the Transparency Directive. We agree that providing additional time after the statutory reporting dates for financial statements allows companies greater flexibility while seeking to balance that objective with ensuring that the information is not so old that it loses its relevance.

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

As a minimum, we would expect that the extractive report should be published after the statutory annual report. A shorter reporting period could impair the quality of the information provided and increase the risk of error through a lack of completeness or accuracy.

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.

No comment

(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.

Although there is a later transposition date for the Transparency Directive, the projected timetables for the first reports to be produced under both the Transparency and Accounting Directives appear to be similar. We therefore would expect the impact to be minimal. The one exception to this may be for UK listed companies that would have an 11 month deadline under the Accounting Directive, but have to change to a 6 month deadline once the Transparency Directive has been transposed. To reduce the possible confusion and any corresponding cost resulting from this, we would ask that the deadlines for the transposition of the Transparency Directive and the effective dates be clarified as soon as possible.

(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.

Requiring UK-registered subsidiaries of EU-registered companies to prepare and publish extractive reports in the intervening period until their parent companies are obliged to produce a consolidated report creates an incremental reporting burden for those subsidiaries. This is particularly true when compared to subsidiaries registered in other Member States where the reporting requirements will be adopted later than in the UK (but within the timetable set by the EU). The value of only certain subsidiaries within a Group publishing this information will be diminished by a lack of clarity over the group-wide contribution and may therefore result in the potential for the data to be misinterpreted or misunderstood.

(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 welcome the development of best practice and we are an advocate of encouraging industry led guidance. This will allow the affected companies themselves to address the practical issues that they have encountered in preparing and publishing the extractive reports.

While a single format might work for a majority of reporters, we would have reservations as to whether a single format could work for all reporters. We therefore suggest that any best practice allows sufficient flexibility to enable all companies to publish meaningful and relevant information

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 anticipate that the vast majority of companies will opt to publish their reports electronically but preventing the submission of paper reports seems unduly restrictive.

(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

While not commenting on the particular details of the penalty scheme we agree that it would be logical for non-compliance to be dealt with in a manner in line with the penalties for non-compliance with other reporting obligations.

We note that guidance would be welcome with respect to what the defence of taking “all reasonable steps” would mean in practice, in particular where local law in a group’s operating jurisdiction is incompatible with the requirements of the EU Directive.

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.

Refer to comments above in 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?

Refer to comments above in response to Question 6.1

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.

Refer to comments above in response to Question 6.1

(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.

The scope of the Directive does not specifically address certain complexities within group organisational structures and as a result there may be confusion on the application of the Directive.

For example, clarity may be required for an organisation listed in more than one jurisdiction and if there is a 'primary' jurisdiction, when determining if the organisation is in the scope of the regulations. For example to address the situation when an entity has a primary listing outside the EU and a secondary listing within the EU.

We acknowledge that there will be practical questions arising of this nature and therefore we would welcome clarity with respect to the processes and mechanisms by which companies can make enquiries to clarify their particular circumstances.

(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.

While we have practical concerns regarding the implementation of numerous sets of rules requiring different information to be assembled and reported (e.g. reporting of payments to governments under section 1504 of the Dodd-Frank act or reporting country-by-country data to tax authorities under the proposed OECD transfer pricing documentation requirements), we expect that the affected companies themselves are best placed to provide quantitative data on the likely costs. We would anticipate that initial costs would outweigh the recurring annual costs as processes and systems are developed to enable the required information to be prepared and published, but these costs should not be underestimated.

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

During the implementation period we note the potential for the extractive reports to be misunderstood if provided without sufficient explanation, including clear descriptions of the categories of payments disclosed.

We also note the other mandatory reporting requirements referred to in question 8.1 focussed on tax payments and transparency around tax reporting. In particular, we note the reassessment of the implementation of the Dodd-Frank legislation as a result of the lawsuit brought by the American Petroleum Institute and therefore both the lessons to be learnt with respect to international developments and how these may affect UK business. We note the UK has a vibrant extractive industries sector and is the base for a large number of internationally focused extractive companies. It is therefore important that the implementation guidance is drafted in a way that is at least consistent with other jurisdictions and does not place a disproportionate burden on UK registered/listed entities.

(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

N/A

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

No further comments

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

No further comments

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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