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Tax transparency and country- by-country reporting

*An overview and
comparison of
the transparency
initiatives.*

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Foreword

The contributions made by business to the public finances of a country are essential to enable governments to fulfil their obligations to promote economic and social development. It is not surprising therefore that there is widespread interest in the payments which are made by companies and received by governments.



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In the wake of the global economic downturn, the need for economic and political stability has intensified the calls for greater transparency and a perceived need to strengthen accountability and good governance for both governments and business. This includes increasingly high profile campaigns from civil society organisations which call for regulation to require companies to provide more detailed country-by-country reporting in financial statements. This reflects in part a lack of public trust in corporate behaviour, concern that companies are not paying their fair share of tax and a belief that current disclosure is difficult for non-tax experts to understand. There are also concerns that governments in some jurisdictions are not making effective use of the tax revenues that they receive.

There are a range of transparency initiatives currently in force or being proposed. The Extractive Industries Transparency Initiative (EITI) was the first to be announced in 2002. In 2010 President Obama introduced the Dodd-Frank Wall Street Reform Act. This includes provisions for country-by-country reporting at a project level for companies in the extractive sector, the final rules for which were adopted on 22 August 2012. Following announcements made by President Barroso (President of the European Commission) in 2010, the European Parliament requested the Commission to initiate proposals for mandatory disclosure requirements, also for companies in the extractive industry. These are currently being considered by the European Parliament.

Alongside these, there are ongoing proposals made under the 'Publish What You Pay' banner and a number of civil society organisations are also calling for more comprehensive country-by-country reporting for all multinational corporations.

There are a number of significant issues for businesses to consider including; the level of resource and cost involved that may be necessary in producing and auditing data required by the various proposals; the potential for misunderstanding or misuse of such detailed financial information; the potential for inconsistent and costly demands for additional information to be disclosed in light of the various initiatives being pursued. Many companies are choosing to explain their approach in a way that will provide the most useful information to the reader.

In our view all companies need to monitor these developments and be actively involved in the debate about the aims of tax transparency and what makes good tax reporting. This briefing has been prepared to help you do so and to provide you with the latest position. The debate on tax reporting continues and we will endeavour to update this publication as significant developments occur. I hope that you find it useful.

A handwritten signature in black ink, appearing to read 'A J R'.

Andrew Packman

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Introduction

Country-by-country reporting initiatives

Currently there are three reporting frameworks which are either in place or which are actively being considered for legislative implementation. These (listed below) relate to companies operating in the extractive sector, and in the case of the EU directives they will additionally apply to those companies active in the logging of primary forests:

- The Extractive Industries Transparency Initiative (EITI)
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) – by project
- The Proposals for EU Directives on Transparency and Accounting requirements – by project

In addition there are two further frameworks which are being proposed by a number of civil society organisations (CSOs):

- The Publish What You Pay (PWYP) proposals – which also focus on the extractive industries.
- Country-by-country reporting (CbyC) proposals for all multinational corporations (MNCs) including those in the extractive sector.

This briefing paper

This briefing paper provides a narrative introduction to each of these five reporting frameworks, describing their origins as well as outlining their:

- key objectives,
- reporting requirements, and
- current status.

After the narrative introductions, an overview and comparison of the information requirements of the four frameworks for the extractive sector is included in a table. This is designed as a quick reference point for checking and comparing their different requirements.

A second table provides an overview and comparison of other key aspects of the four initiatives, covering:

- who needs to report,
- which levels of government are covered by the requirements to report payments to government,
- materiality,
- reporting timeframe,
- where the data needs to be reported,
- level of data aggregation requirements,
- reporting basis, and
- audit requirements.

A third table provides an overview of the information requirements and the other key aspects of the country-by-country proposals for all MNCs (including extractives).

A list of sources is provided, together with appendices with extracts from these which set out the EITI reporting framework, the proposals for Directives of the EU on Transparency and Accounting requirements, the PWYP and country-by-country reporting proposals and, in the case of the Dodd-Frank Act, the wording of the legislation and final SEC rules recently adopted.

This paper is based only on our understanding and reading of the source documents listed and does not claim to be complete or comprehensive. It also represents the status of the various frameworks and requirements as at August 2012. These initiatives will continue to evolve, but developments beyond this date are not reflected.



Extractive Industries Transparency Initiative



“The EITI is a globally developed standard that promotes revenue transparency at the local level”

The Extractive Industries Transparency Initiative (EITI) is a coalition of governments, companies and civil society groups, investors and international organisations.

Key objectives

EITI reporting requirements are determined by individual countries via a multi-stakeholder consultation process. The EITI provides a reporting framework as guidance for the country programmes, but does not mandate any reporting requirements.

It aims to strengthen governance in resource-rich countries by improving transparency and accountability in upstream extractive industries. The EITI supports improved governance through the verification and full publication of company payments and government revenues from oil, gas and mining.

Reporting requirements

The EITI established a disclosure framework for companies to publish what they pay and for governments to disclose what they receive. The framework aims at being a robust yet flexible methodology that ensures a global standard is maintained throughout the different implementing countries.

Implementation itself, however, is the responsibility of individual countries. According to the EITI rules, each participating country is required to determine their own reporting template and define which revenue streams are included in company and government disclosures. The country’s template must be agreed by a multi-stakeholder group in the country, which includes government, companies and civil society organisations.

The EITI framework states that all material upstream oil and gas, and mining payments to government and all material revenues received by government from oil, gas and mining companies should be published. The framework provides guidance on the types of payments that might be included, but it is up to the country to define what the material tax payments comprise and the time period to be covered. The following revenue streams are listed in the framework guidance (see Appendix A).

- Host government’s production entitlement.
- National state owned company production entitlement.
- Profits tax.
- Royalties.
- Dividends.
- Production, signatory, discovery and other bonuses.
- License fees, and other consideration for licenses and concessions.
- Other significant benefits to government.

Taxes levied on consumption, such as VAT, sales taxes and also personal income taxes are specifically excluded from the EITI framework. Payments made for infrastructure improvements are also explicitly excluded. Corporate social investments are not included in the framework but are included in some local country EITI programmes.

Companies report their information to the EITI country programme, and EITI compliant countries must make their EITI reports publicly available. Signing up to the EITI is voluntary.

Status

Originally established in 2003, the EITI states on their website that now over 60 of the world’s largest oil, gas and mining companies support and actively participate in the EITI process. In terms of countries implementing the EITI, there are now 14 fully-compliant countries; while 22 countries are ‘candidates’, i.e., their governments are committed to a process of moving towards full compliance. A list of EITI compliant and candidate countries can be found in Appendix B.



Dodd-Frank Wall Street Reform and Consumer Protection Act

SEC registered extractive industry companies will be required to report all payments made to US Federal and foreign governments, by project and by country, on an annual basis.

On 21 July 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) which includes provisions requiring extractive industry companies (upstream and downstream) to report all payments made to US Federal and foreign governments.

Key objectives

In his speech, President Obama highlighted that:

“...countries are more likely to prosper when governments are accountable to their people. So we are leading a global effort to combat corruption... That’s why we now require oil, gas and mining companies that raise capital in the United States to disclose all payments they make to foreign governments...”¹

Reporting requirements

Section 1504 of the Dodd-Frank Act requires SEC registered companies in the extractive industries to file an annual SEC report. This requires the disclosure of payments made by the company, its subsidiaries, or entities under its control, to the US Federal Government and foreign governments, for the purpose of commercial development of oil, natural gas, or minerals.

¹ Remarks by the President at the Millennium Development Goals Summit in New York, September 22, 2010. Available at: <http://www.whitehouse.gov/the-press-office/2010/09/22/remarks-president-millennium-development-goals-summit-new-york-new-york>

The Dodd-Frank Act defines payments as:

“taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.”²

On 22 August 2012, the SEC adopted rules expanding the definition of payment to include:

- taxes on income, profit or production;
- royalties and fees;
- production entitlements;
- bonuses;
- dividends; and
- payments for infrastructure improvements.

The SEC rule clarifies that payments made to “foreign governments” include payments made to sub-national governments. The rule also states the filing requirement applies to US and foreign companies that are required to file annual reports with the SEC, regardless of size or whether the company is government-owned.

The rule requires these companies to disclose the following information:

- the type and total amount of such payments made for each project (on a cash rather than accrual basis);
- the type and total amount of such payments made to each government;
- the type and total payments by category (e.g., taxes, royalties, etc.);
- the currency used to make the payments;
- the financial period in which the payments were made;
- the business segment of the company that made the payments;
- the government that received the payment and the country in which the government is located;
- the project of the company to which the payments relate.

Payments are to be disclosed if they are ‘not de minimis’, which is defined as less than US\$100,000 in a single payment or series of payments per year.

The SEC rule provides no exception to the filing requirement where foreign law precludes disclosure, where the information is commercially sensitive, or where the company is subject to similar reporting requirements under home country laws, listing rules, or an EITI programme.

² Dodd-Frank Wall Street Reform and Consumer Protection Act 15 U.S.C. 78m (q)(1)(C)(ii), p.845.

Rather than requiring disclosure on their annual report (e.g., Form 10-K Form 20-F), companies must file, no later than 150 days after the end of the company's fiscal year, a new SEC form, Form SD, with the required information included in a separate electronic format exhibit. The SEC rules do not require the information contained on Form SD to be subject to external audit. The information contained in the exhibit will be publicly available.

Status

The Dodd-Frank Act specified that the disclosures were to be required once final rules were issued. These were to be issued not later than 270 days after enactment which would have meant that companies would have been required to report this data in their fiscal year 2012 filings. However, implementation was delayed while the SEC held an extended public consultation on the rule to be adopted. During these consultations, the SEC sought and considered comments on a wide range of issues, including:

- How they should define 'commercial development of oil, natural gas, and minerals', i.e., whether the new rules should cover both upstream and downstream activities.
- Whether there should be any exemptions from the filing requirement.
- The types of payments that should be disclosed.
- How to define 'project'.

- How to define payments that were not 'de minimis'.
- Whether the disclosures should be audited.
- Whether the data should be provided on an accruals, instead of a cash basis.
- The costs relating to the additional disclosure requirements.

The SEC also held numerous meetings with various interested groups, including industry groups and CSOs.

On 22 August 2012, the SEC adopted rules implementing Section 1504. The rules state that companies will be required to report the payments specified for fiscal years that end after 30 September 2013. As payments made after 30 September 2013, must be reported, it is expected that most company's initial reports will be partial reports and will only cover payments made between 1 October 2013 and the end of the company's fiscal year.

It is noted that the new rules leave the term 'project' undefined to provide companies the flexibility in applying the term to different business contexts. However, the rules released provide some guidance on the Commission's view of what a project would be.

Proposals for EU Directives on Transparency and Accounting

The proposals are for amendments to the existing Transparency and Accounting Directives to introduce new reporting requirements for listed and non-listed large companies active in the extractive industry or in the logging of primary forests.

In September 2010, the European Parliament made a request to the European Commission for action in this area. A declaration was made in the concluding Declaration of the G8 Summit in May 2011, where G8 governments committed to

“setting in place transparency laws and regulations or to promoting voluntary standards that require or encourage oil, gas and mining companies to disclose the payments they make to governments.”

The proposals are to help deepen the G8’s special commitment to Africa.³ The European Commission has also commented that it is responding to international developments, and in particular to the inclusion of a requirement to report payments to governments in the Dodd-Frank Act.

Key objectives

It is proposed that companies shall disclose the payments they make to governments in each country where they operate and for each project, where the payment has been attributed to a certain project and when material to the recipient government. By requiring disclosure of payments at a project level, the EU’s objective is to give local communities insight into what governments are being paid by EU multinationals for exploiting local oil/ gas fields, mineral deposits and forests. The EU says that this would allow these communities to demand more effectively that government accounts for how the money had been spent locally.

³ EUROPA, Press release, Memo/11/734, 25/10/2011, Proposal for Directive on transparency requirements for listed companies and proposals on country by country reporting – frequently asked questions, point 17.

Summary of reporting requirements

The following types of payments made to government shall be reported:

- production entitlements,
- taxes on profits,
- royalties,
- dividends,
- signature, discovery and production bonuses,
- licence fees, rental fees, entry fees and other considerations for licences and/or concessions, and
- other direct benefits to the government concerned.

This proposal is comparable to the US Dodd-Frank Act. However, there are three main differences:

1. The EU logging industry is within the scope of the proposed reporting requirement in addition to the oil, gas and mining industries (in the US oil, gas and mining are the targeted sectors).
2. The EU rules would apply to large unlisted companies, as well as listed companies, whereas the US rules are restricted to listed extractive companies only.
3. The EU rules exclude any type of payments made to a government in a country where the public disclosure is prohibited by law. The SEC rules provide no exception in such cases.

The EU Commission and the European Parliament also propose to amend existing Accounting Directives which regulate the reporting requirements in line with the Transparency Directive.

Status

On 21 June 2012, the Council of the European Union adopted a ‘general approach’ on the essential elements of the proposals made by the European Commission. This paved the way for negotiations with the European Parliament which will take place during the remaining months of 2012.

The Committee on Legal Affairs in the European Parliament has been made responsible for these proposals. This Committee has asked for the opinions from a number of other committees in the Parliament and opinions received to date call for an extension of the proposals so that they would apply to all large companies and not just those operating in the extractive and primary logging industries. They also call for lower materiality thresholds and for the data that will be reported to be subject to statutory audit. It is expected that the proposals will have their first reading in the European Parliament in November.

There are therefore a number of issues which have still to be resolved and so the timing of the final adoption and when these proposals will become effective remains unclear.

Publish What You Pay (PWYP)



PWYP's aim is for extractive industry companies to report their payments to government on a country-by-country basis in their audited financial reports.

Publish What You Pay (PWYP) is a campaign promoted by a coalition of civil society organisations. Its mission is to help citizens of developing countries rich in natural resources to make their governments more accountable for revenues earned from the upstream minerals and oil and gas industries, through a global campaign for revenue transparency in these industries.

Key objectives

PWYP's objectives are for companies to “publish what you pay” and for governments to “publish what you earn” as a necessary step towards a more accountable system for the management of revenues from extractive industries. PWYP further calls for the public disclosure of extractive industry contracts and for licensing procedures to be carried out transparently in line with best international practice. They see this as being central to any effort to build corporate and government accountability to the citizens of resource rich countries.

Reporting requirements

The PWYP proposal would require companies in the upstream extractive industries to report the following information.

Payments to government:

- Royalties and taxes paid in cash or kind
- Dividends
- Bonuses
- License and concession fees

Other information:

- Reserves
- Production volumes
- Production revenues
- Production and development costs
- Names and location of each key subsidiary and property

The PWYP proposals do not specifically refer to production entitlements but do state that all significant benefit streams to government should be disclosed and that their proposals are intended to complement the EITI. Hence production entitlements, where significant, may be deemed to be part of the PWYP disclosure requirements.

Companies would be required to disclose the above information, on a country-by-country basis, in their audited financial statements. There are no materiality limits in the proposals.

Status

PWYP has and continues to lobby the International Accounting Standards Board (IASB) to bring in a new reporting standard for extractive

industries. In April 2010 the IASB issued a Discussion Paper on various accounting matters relating to the sector. The paper included a chapter which focussed specifically on the PWYP proposals for the disclosure of payments to government. Comments were sought on the Discussion Paper, and a summary of these was published in October 2010.

The views of respondents on the ‘payments to government’ aspects of the PWYP proposals were highly polarised on whether these disclosures are a financial reporting or a corporate social responsibility reporting issue. Views also diverged on whether the benefits to investors of disclosing payments to government on a country-by-country basis would outweigh the costs of preparing and auditing that information.

The extractive activities project is currently on hold; the IASB has still to make the decision whether to add it to its active agenda in the future. If the IASB decides to add the project to its agenda, the project's objective would be to develop an IFRS on accounting for extractive activities that would supersede IFRS 6 Exploration for and Evaluation of Mineral Resources. In making its decision, in addition to considering the responses to its own consultation process, the IASB plans to take into account the experience users and preparers have with the SEC rules in relation to the Dodd-Frank Act.

Country-by-country reporting



Country-by-country reporting would require a multinational company to report key business and financial information for each country in which it operates.

Many civil society organisations around the world are campaigning for country-by-country reporting for all multinational corporations (MNCs) – not just those in the extractives industry. The campaign is being led by Publish What You Pay (PWYP), and the Tax Justice Network. The Publish What You Pay campaign is described earlier in this report. The Tax Justice Network was formed in 2003 and comprises individuals and organisations from a range of sectors including academics, financial professionals, development organisations, civil society organisations, lawyers and trade unions. The Tax Justice Network is committed to a socially just, democratic and prosperous system of taxation and its mission is to promote tax justice and tax co-operation and resist tax avoidance, tax evasion and tax competition.

Key objectives

Country-by-country reporting is particularly relevant for stakeholders located in developing countries. Country-by-country reporting would be of:

“considerable benefit to developing countries by letting the tax authorities, civil society and other regulatory agencies in those places see just what the multinationals located there actually do, how their trade is undertaken, and what profits and taxes they declare.”⁴

⁴ ‘Country-by-County Reporting: Holding multinational corporations to account wherever they are’ (June, 2009), Task Force – Financial Integrity & Economic Development, pp.6-7.

These stakeholders would also be able to compare the situation in their own country with what the multinational is doing in other countries and if appropriate challenge the local arrangements.

The proponents believe that, ultimately, this greater transparency would result in MNCs generally paying more tax in developing countries thus improving the wellbeing of their people and reducing their dependency on aid.

Summary of reporting requirements

Country-by-country reporting would require MNCs to publish detailed financial information on an individual country basis. It also requires a list of all the countries in which they have activities and the names of their entities in each country.

- **Profit and loss account** – including sales, purchases and financing costs (each split between third party and intra-group), as well as current and deferred tax charges.
- **Balance sheet** – including current assets and liabilities and deferred liabilities (again each split between third party and intra-group), in addition to fixed assets.
- **Cash flow** – corporate income tax paid.

The MNC would be required to publish this information in its annual financial statements and would thus be subject to audit. Financial information in the profit and loss account and the balance sheet would be on an accruals basis; corporation tax paid in the cash flow would be on a cash basis.

The reporting requirements are set out in full on pages 36 & 37 and a Tax Justice Network proforma example of a country-by-country set of accounts is provided in Appendix A.

Status

The proponents of country-by-country reporting have been and continue to be part of the debate urging institutions to introduce these reporting requirements for MNCs. Institutions targeted include the following:

- G-20
- European Parliament and the European Commission
- International Accounting Standards Board (IASB)
- Organisation for Economic Co-operation and Development (OECD)

Country-by-country reporting

The Tax Justice Network made a submission to the European Commission public consultation on country-by-country reporting in late 2010.⁴ This submission introduced the concept of materiality thresholds. Companies would be required to make full country-by-country disclosures where one of the four situations arises in the reporting period:

- Turnover plus financial income exceeds US\$5m in the jurisdiction, or
- The net value of tangible fixed assets in the jurisdiction increases by more than US\$5m, or
- Turnover plus financial income in the jurisdiction exceeds 5% of the total consolidated turnover plus financial income, or
- The jurisdiction is one in which upstream extractive industries activity occurs.

Companies with an in-country turnover plus financial income exceeding US\$1m would be required to make more limited country-by-country disclosures.

These requirements have been updated in the latest country-by-country reporting document issued by the Tax Justice Network⁵, so that the above turnover criteria would also now include net hedging derivative income in the period.

The disclosure requirements for the lower materiality threshold were also updated as follows:

- Turnover plus hedging, derivative and financial income in the jurisdiction exceeds US\$1m in a reporting period.
- The net value of tangible fixed assets in the jurisdiction increases by more than US\$1m in a reporting period.
- The situations noted under the full country-by-country reporting criteria have not arisen.

Overview and comparison of country-by-country reporting proposals for the extractive industry – information requirements

⁴'Country-by-Country Reporting, Shining Light onto Financial Statements', TJN International Secretariat

⁵'Country-by-Country Reporting: Accounting for globalisation locally' (May 2012), Richard Murphy, FCA for the Tax Justice Network, pp.19,20.

Overview and comparison of country-by-country reporting proposals for the extractive industry – information requirements

Reporting criteria		Initiative name			
		EITI Framework	Dodd-Frank	EU Directives (proposed) ⁶	PWYP (proposed)
Payments to government	Names and locations of each key subsidiary and property in each country	x	x	x	✓
	Production entitlements	✓	✓	✓	✓
	Host government's production entitlement				
	National state-owned company production entitlement	✓	✓	✓	✓
	Profit taxes	✓	✓	✓	✓
	Corporate income tax				
	Other taxes on income, profit or production, e.g. petroleum revenue tax	✓	✓	✓	✓
	Royalties	✓	✓	✓	✓
	Dividends	✓	✓	✓	✓
	Production, signatory, discovery and other bonuses	✓	✓	✓	✓
Licence fees, rental fees, entry fees and other considerations for licences and/or concessions	✓	✓	✓	✓	
Reserves volumes	x	x	x	✓	
Production volumes	x	x	x	✓	
Production revenues	Sales to external customers	x	x	x	✓
	Transfers to downstream operations	x	x	x	✓
Costs	Production costs	x	x	x	✓
	Development costs	x	x	x	✓

⁶ Proposals to amend the Transparency and Accounting Directives.

Overview and comparison of country-by-country reporting proposals for the extractive industry – other key aspects

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Initiative name	EITI Framework	Dodd-Frank	EU Directives (proposed)	PWYP (proposed)
Who needs to report?	Extractives industry companies involved in exploration and production, i.e., upstream activities.	All extractive industry companies required to file an annual report with the SEC for activities of itself, its subsidiaries, and entities under its control.	Companies active in the extractive industry or the logging of primary forests which are either listed on EU regulated markets or are large non listed companies. Large is defined as a company which exceeds two of the three following criteria: turnover EUR40m; total assets EUR20m and employees 250.	Extractives industry companies involved in exploration and production, i.e. upstream activities
Payments to which levels of government?	Country EITI programmes decide whether payments to sub national levels of government are material and, if so, how to include them.	Payments to sub national levels of foreign government are included; but payments to sub national levels of government in the United States are excluded.	Payment to each government within a financial year (including type of payment) Payments have been attributed to a specific project.	PWYP calls on companies to disclose payments to government for every country of operation and to disclose which level of government payments are made to.
Materiality	All material revenue streams must be reported. EITI countries are free to establish a materiality level for disclosure which may relate to size of payments or size of companies.	No materiality levels but 'de minimis' cut off.	Companies are required to report all material payments to government.	No materiality levels.
Reporting timeframe	EITI country programmes decide on the time period to be covered.	Information to be provided for the fiscal year covered by the applicable SEC filings.	Report of payments made to governments should be disclosed on yearly basis.	Information to be provided for the fiscal year covered by the applicable annual report.
Where the data needs to be reported	There is no public disclosure by the company. Companies need to report to the EITI Country Program using the relevant programme's template. EITI country reports are publicly available in fully compliant EITI countries.	Companies make a separate annual report (Form SD and electronic exhibit) to be filed within 150 days of the close of the fiscal year.	The companies should prepare and make public report on the payments made governments on annual basis.	Annual audited financial statements.
Level of data aggregation	Country EITI Programs decide whether to report data: <ul style="list-style-type: none"> • Aggregated at country level; and/or • Company by company 	Company data to be reported: <ul style="list-style-type: none"> • Country-by-country; and • By project (no definition of project) 	Company data to be reported: <ul style="list-style-type: none"> • Country-by-country including consolidated report • By project 	Company data to be reported: <ul style="list-style-type: none"> • Country-by-country
Reporting basis for payments to government	Cash not accruals basis. Production entitlements can be reported in cash or kind.	Cash basis in line with the EITI.	The total amount and per type of payments, including payments in kind, made to each government within a financial year.	Cash not accruals basis. Payments in kind reported as cash equivalents.
Audit requirements	Where companies are audited to international standards, there is generally no further audit requirement	Payment disclosures are not to be part of the audited financial statements and no audit is to be required for this data.	Financial statements are subject to statutory audit.	Inclusion within the financial statements means that data will be subject to audit.



Overview of country-by-country reporting proposals for all MNCs including extractives



Information requirements	
Countries and companies	
All MNCs must report the name of each country in which it operates and the names of all its companies trading in each country with the exception of dormant companies. The total number of dormant companies should be disclosed by country of incorporation.	
Profit and loss account	
Turnover	X
Purchases	(X)
Labour costs	(X)
Operating profit	X
Net finance cost	(X)
Tax charge	(X)
Net profit after tax	X
Dividends paid (in a note)	
Balance sheet	
Total tangible assets	X
Total intangible assets	X
Total fixed assets	X
Total current assets	X
Total current liabilities	(X)
Net current assets	X
Deferred liabilities	(X)
Net assets	X
Cash flow	
Corporation tax	X

Other key aspects	
Who needs to report?	Listed MNCs and large private companies in all sectors.
Payments to which level of government	Proposals apply only to corporate income tax, but all extractives should also provide a full breakdown of all those benefits paid to government using the categories required by the EITL.
Materiality	The Tax Justice Network submission to the European Commission consultation proposed some materiality limits determined at the level of the country not at the level the reporting entity.
Reporting timeframe	Information to be provided for the fiscal year covered by the applicable annual report.
Where the data needs to be reported	Annual, audited financial statements.
Level of data aggregation	Company data to be reported on a country-by-country basis; data to be disaggregated to show splits between third party and intra-group transactions.
Reporting basis	Accruals basis for profit and loss account and balance sheet; cash basis for cash flow disclosures.
Audit requirements	Inclusion within the financial statements means that data will be subject to audit. Country-by-country basis would mean all countries would be material for audit.

Sources



EITI**Main source:**

'Extractive Industries Transparency Initiative: Source Book'.
<http://eiti.org/document/sourcebook>

Source 2:

'Implementing the Extractive Industries Transparency Initiative – Applying Early Lessons from the Field' (2008).
http://siteresources.worldbank.org/INTOGMC/Resources/implementing_eiti_final.pdf

Dodd-Frank**Main sources:**

Securities and Exchange Commission 17 CFR Parts 229 and 249; Release No. 34-63549; File No. S7-42-10, RIN 3235-AK85 'Disclosure of payments by Resource Extraction Issuers Agency'.
<http://www.sec.gov/rules/proposed/proposedarchive/proposed2010.shtml>

Securities and Exchange Commission 17 CFR Parts 240 and 249; Release No. 34-67717; File No. S7-42-10, RIN 3235-AK85 'Disclosure of payments by Resource Extraction Issuers Agency'.
<http://www.sec.gov/rules/final/2012/34-67717.pdf>

Source 2:

Press release 2012-164, *SEC Adopts Rules Requiring Payment Disclosures by Resource Extraction Issuers*
<http://www.sec.gov/news/press/2012/2012-164.htm>

EU Directives**Main sources:**

European Commission, Brussels, 25.10.2011, COM(2011) 683 final, 2011/0307 (COD), 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC'.
http://ec.europa.eu/internal_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal_en.pdf

Council of The European Union, Brussels, 19 June 2012, 1142/12, Interinstitutional file: 2011/0308 (COD), 'Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings - General Approach'
<http://register.consilium.europa.eu/pdf/en/12/st11/st11442.en12.pdf>

Source 2:

European Commission, Brussels, 25.10.2011, COM(2011) 684 final, 2011/0308 (COD), 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings'.
http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/COM_2011_684_en.pdf

PWYP**Main source:**

IASB Discussion Paper DP/2010/1 on 'Extractive Activities', pp.145 – 163.
<http://www.iasb.org/NR/rdonlyres/735F0CFC-2F50-43D3-B5A1-0D62EB5DDDB99/0/DPExtractiveActivitiesApr10.pdf>

Source 2:

'Mobilising Investors for International Accounting Standard on Extractives'
<http://www.publishwhatyoupay.org/en/story/mobilising-investors-international-accounting-standard-extractives>

Source 3:

'Mission: A global campaign for revenue transparency in the oil, gas & mining industries'.
<http://www.publishwhatyoupay.org/en/mission>

Source 4:

'Reform of international accounting standards for oil, gas & mining industries offers unprecedented opportunity for transparency'.
<http://www.publishwhatyoupay.org/resources/reform-international-accounting-standards-oil-gas-mining-industries-offers-unprecedented-o>

Source 5:

IFRS Staff paper for IASB Meeting: 'Extractive Activities – Comment Letter Summary' (October, 2010).
<http://www.ifrs.org/Meetings/IASB+19+October+2010.htm>

Country-by-country reporting**Main source:**

'Country-by-Country Reporting: Holding multinational corporations to account wherever they are' (June 2009), Task Force - Financial Integrity & Economic Development
http://www.financialtaskforce.org/wp-content/uploads/2009/06/Final_CbyC_Report_Published.pdf

Source 2:

'Country-by-Country Reporting, Shining Light onto Financial Statements', TJN International Secretariat
<http://www.taxresearch.org.uk/Documents/CBCDec2010.pdf>

Source 3:

'Why is Country-by-Country financial reporting by Multinational Companies so important?' – Tax Justice Network
<http://www.taxresearch.org.uk/Documents/CountrybyCountryReporting.pdf>

Source 4:

'Country-by-Country Reporting: Accounting for globalisation locally' (May 2012), Richard Murphy, FCA for the Tax Justice Network.
<http://www.taxresearch.org.uk/Documents/CBC2012.pdf>



Appendices

Appendix A – EITI reporting requirements

Appendix B – EITI compliant and candidate countries

Appendix C – Dodd-Frank Act: Section 1504 and final SEC rules

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Appendix E – PWYP reporting requirements

Appendix F – Country-by-country reporting requirements



The Extractive Industries Transparency Initiative (EITI) publishes the following guidance on benefit streams that individual country EITI Programs could include in their reporting requirements.⁷

Benefit Stream	Further description
Host government's production entitlement	This is the host government's share of the total production. This production entitlement can either be transferred directly to the host government or to the national state-owned company. Also, this stream can either be in kind and/or in cash.
National state-owned company production entitlement	This is the national state-owned company's share of the total production. This production entitlement is derived from the national state-owned company's equity interest. This stream can either be in kind and/or in cash.
Profits taxes	Taxes levied on the profits of a company's upstream activities.
Royalties	Royalty arrangements will differ between host government regimes. Royalty arrangements can include a company's obligation to dispose of all production and pay over a proportion of the sales proceeds. On other occasions, the host government has a more direct interest in the underlying production and makes sales arrangements independently of the concession holder. These "royalties" are more akin to a host government's production entitlement.
Dividends	Dividends paid to the host government as shareholder of the national state-owned company in respect of shares and any profit distributions in respect of any form of capital other than debt or loan capital.
Bonuses (such as signature, discovery, production)	Payments related to bonuses for and in consideration of: <ul style="list-style-type: none"> • Awards, grants and transfers of the extraction rights; • Achievement of certain production levels or certain targets; and • Discovery of additional mineral reserves/deposits.
Licence fees, rental fees, entry fees and other considerations for licences and/or concessions	Payments to the host government and/or national state-owned company for: <ul style="list-style-type: none"> Receiving and/or commencing exploration and/or for the retention of a licence or concession (licence/concession fees); Performing exploration work and/or collecting data (entry fees). These are likely to be made in the preproduction phase. Leasing or renting the concession or licence area.
Other significant benefits to host governments	These benefit streams include tax that is levied on the income, production or profits of companies. These exclude tax that is levied on consumption, such as value-added taxes, sales taxes or personal income taxes.

⁷ Extractive Industries Transparency initiative: Source book (March, 2005), pp.27-8.

Appendix B:

EITI candidate and compliant countries

The EITI lists the following countries as being either candidate or compliant countries on its website, as of 9 August 2012.

Compliant countries

Azerbaijan
Central African Republic
Ghana
Kyrgyz Republic
Liberia
Mali
Mauritania
Mongolia
Niger
Nigeria
Norway
Peru
Timor-Leste
Yemen

Appendix B:

EITI candidate and compliant countries

Candidate countries

Afghanistan	Iraq
Albania	Kazakhstan
Burkina Faso	Madagascar (suspended)*
Cameroon	Mozambique
Chad	Republic of Congo
Côte d'Ivoire	Sierra Leone
Democratic Republic of Congo	Solomon Islands
Gabon	Tanzania
Guatemala	Togo
Guinea	Trinidad and Tobago
Indonesia	Zambia

*The EITI Board may temporarily suspend an implementing country if in breach of the EITI Principles and Criteria. Until the EITI Board is satisfied that corrective measures have been undertaken in that period, the suspension will be lifted.

Section 1504 of the Dodd-Frank Act sets out the legislative requirements for disclosure of payments by resource extraction issuers (extracts).

SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

“(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

“(1) DEFINITIONS.—In this subsection—
“(A) the term ‘commercial development of oil, natural gas, or minerals’ includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

“(B) the term ‘foreign government’ means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

“(C) the term ‘payment’—

“(i) means a payment that is—

“(I) made to further the commercial development of oil, natural gas, or minerals; and

“(II) not de minimis; and

“(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue

stream for the commercial development of oil, natural gas, or minerals;

“(D) the term ‘resource extraction issuer’ means an issuer that—

“(i) is required to file an annual report with the Commission; and

“(ii) engages in the commercial development of oil, natural gas, or minerals;

“(E) the term ‘interactive data format’ means an electronic data format in which pieces of information are identified using an interactive data standard; and

“(F) the term ‘interactive data standard’ means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

“(2) DISCLOSURE.—

“(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource H. R. 4173—846 extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

“(i) the type and total amount of such payments made for each project of the

resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

“(ii) the type and total amount of such payments made to each government.

“(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

“(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

“(D) INTERACTIVE DATA STANDARD.—“(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

“(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

“(I) the total amounts of the payments, by category;

“(II) the currency used to make the payments;

“(III) the financial period in which the payments were made;

“(IV) the business segment of the resource extraction issuer that made the payments;“(V) the government that received the payments, and the country in which the government is located;

“(VI) the project of the resource extraction issuer to which the payments relate; and

“(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

“(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

“(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

“(3) PUBLIC AVAILABILITY OF INFORMATION.—

“(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

“(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.”.

The Securities and Exchange Commission adopted rules mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (section 1504) on 22 August 2012 (extracts).

II. FINAL RULES IMPLEMENTING SECTION 13(q)

A. Summary of the Final Rules

Consistent with the proposal, we are adopting final rules that define the term “resource extraction issuer” as defined in Section 13(q). As proposed, the final rules will apply to all US companies and foreign companies that are engaged in the commercial development of oil, natural gas, or minerals, and that are required to file annual reports with the Commission, regardless of the size of the company or the extent of business operations constituting commercial development of oil, natural gas, or minerals. Consistent with the proposal, the final rules will apply to an issuer, whether government-owned or not, that meets the definition of resource extraction issuer.

Consistent with the proposal and in light of the structure, language, and purpose of the statute, the final rules do not provide any exemptions from the disclosure requirements. As such, the final rules do not include an exemption for certain categories of issuers or for resource extraction issuers subject to similar reporting requirements under home country laws, listing rules, or an EITI programme. The final rules also do not provide an exemption for situations in which foreign law may prohibit the

required disclosure. In addition, the final rules do not provide an exemption for instances when an issuer has a confidentiality provision in an existing or future contract or for commercially sensitive information.

Consistent with Section 13(q) and the proposal, the final rules define “commercial development of oil, natural gas, or minerals” to include the activities of exploration, extraction, processing, and export, or the acquisition of a license for any such activity.

Consistent with Section 13(q) and the proposal, the final rules define “payment” to mean a payment that is made to further the commercial development of oil, natural gas, or minerals, is “not de minimis,” and includes taxes, royalties, fees (including license fees), production entitlements, and bonuses. After considering the comments, under the final rules and in accordance with Section 13(q)(1)(C)(ii), we also are including dividends and payments for infrastructure improvements in the list of payments required to be disclosed. The final rules include instructions to clarify the types of taxes, fees, bonuses, and dividends that are covered. In addition, after considering the comments, we have determined to define the term “not de minimis.” Unlike the proposed rules,

which left the term “not de minimis” undefined, the final rules define “not de minimis” to mean any payment, whether a single payment or a series of related payments, that equals or exceeds \$100,000 during the most recent fiscal year.

Consistent with Section 13(q) and the proposal, after considering the comments, we have decided to leave the term “project” undefined.

Consistent with the proposal, the final rules require a resource extraction issuer to disclose payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer to a foreign government or the US Federal Government for the purpose of commercial development of oil, natural gas, or minerals. A resource extraction issuer will be required to disclose payments made directly, or by any subsidiary, or entity under the control of the resource extraction issuer. Therefore, a resource extraction issuer must disclose payments made by a subsidiary or entity under the control of the resource extraction issuer where the subsidiary or entity is consolidated in the resource extraction issuer’s financial statements included in its Exchange Act reports, as well as payments by other entities it controls as determined in accordance with Rule 12b-2. A resource extraction issuer may be required to provide the disclosure for entities in which it provides proportionately consolidated information. A resource extraction issuer will be required to determine whether it has control of an entity for purposes of the final rules based on a consideration of all relevant facts and circumstances.²⁹

We are adopting the definition of “foreign government” consistent with the definition in Section 13(q), as proposed. A “foreign government” includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government. As proposed, the final rules clarify that “Federal Government” means the United States Federal Government. The final rules do not require disclosure of payments made to subnational governments in the United States. Consistent with the proposal, the final rules clarify that a company owned by a foreign government is a company that is at least majority-owned by a foreign government.

After considering the comments, the final rules we are adopting require resource extraction issuers to provide the required disclosure about payments in a new annual report, rather than in the issuer’s existing Exchange Act annual report as proposed. We are adopting amendments to new Form SD to require the disclosure.³⁰ Similar to the proposal, the Form SD will require issuers to include a brief statement in the body of the form in an item entitled, “Disclosure of Payments By Resource Extraction Issuers,” directing users to detailed payment information provided in an exhibit to the form. As adopted, in response to comments, the final rules require resource extraction issuers to file Form SD on EDGAR no later than 150 days after the end of the issuer’s most recent fiscal year. The final rules will require resource extraction issuers to present the payment information

Appendix C:

Dodd-Frank Act: Section 1504 and final SEC rules

in one exhibit to new Form SD rather than in two exhibits, as was proposed. The required exhibit must provide the information using the XBRL interactive data standard.³¹ Because the XBRL exhibit will be automatically rendered into a readable form available on EDGAR, we are not requiring a separate HTML or ASCII exhibit in addition to the XBRL exhibit. Under the final rules, and as required by the statute, a resource extraction issuer must submit the payment information using electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the US Federal Government:

- the total amounts of the payments, by category;
- the currency used to make the payments;
- the financial period in which the payments were made;
- the business segment of the resource extraction issuer that made the payments;
- the government that received the payments, and the country in which the government is located; and
- the project of the resource extraction issuer to which the payments relate.³²

In addition, a resource extraction issuer must provide the type and total amount of payments made for each project and the type and total amount of payments made to each government in interactive data format. Unlike the proposal, in response to comments we received, the final rules require resource extraction issuers to file rather than furnish the payment information.

Under the final rules, a resource extraction issuer will be required to comply with the new rules and form for fiscal years ending after September 30, 2013. For the first report filed for fiscal years ending after September 30, 2013, a resource extraction issuer may provide a partial year report if the issuer's fiscal year began before September 30, 2013. The issuer will be required to provide a report for the period beginning October 1, 2013 through the end of its fiscal year. For any fiscal year beginning on or after September 30, 2013, a resource extraction issuer will be required to file a report disclosing payments for the full fiscal year.

Appendix C:

Dodd-Frank Act: Section 1504 and final SEC rules

Notes:

²⁹ See Exchange Act Rule 12b-2 for the definition of “control.” See also note 315.

³⁰ In another release we are issuing today, we are adopting rules to implement the requirements of Section 1502 of the Dodd-Frank Act and requiring issuers subject to those requirements to file the disclosure on Form SD. See Conflict Minerals, Release 34-67716 (August 22, 2012) (“Conflict Minerals Adopting Release”). Because of the order of our actions, we are adopting Form SD in that release and we are amending the form in this release, but we intend for the form to be used equally for these two separate disclosure requirements and potentially others that would benefit from placement in a specialized disclosure form.

³¹ As proposed, an issuer would have been required to submit two exhibits – one in HTML or ASCII and the other in XBRL. As discussed below, we have decided to require only one exhibit for technical reasons and to reduce the compliance burden of the final rules.

³² See Item 2.01(a) of Form SD (17 CFR 249.448).

Appendix D: EU Directives requirements

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC (extracts).

Article 6 defines the industry sectors which will need to report on their payments to governments.

Article 6 is replaced by the following:

‘Article 6

Report on payments to governments

Member States shall require issuers active in the extractive or logging of primary forest industries, as defined in [...] to prepare, in accordance with Chapter 9 of Directive 2011/./EU of the European Parliament and of the Council (*), a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least five years. Payments to governments shall be reported at consolidated level.

(*) OJ L [...].’

Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings – General Approach (extracts).

Chapter 9 sets out the specifics on whom and what to be reported in terms of payments of governments.

Chapter 9

Report on payments to governments

Article 36

Definitions

For the purpose of this chapter, the following definitions shall apply:

1. “Undertaking active in the extractive industry” means an undertaking with any activity involving the exploration, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council²¹.
2. “Undertaking active in the logging of primary forests” means an undertaking with activities as referred to in Section A-Division 2.2 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council²², in primary forests.

Appendix D: EU Directives requirements

Article 37

Undertakings required to report on payments to governments

1. Member States shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments, including payments in kind, made to governments on an annual basis.
2. That obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:
 - a. the parent undertaking is subject to the laws of a Member State; and
 - b. the payments to governments made by the undertaking are included in the consolidated report on payment to governments drawn up by that parent undertaking in accordance with Article 39.

Article 38

Content of the report

1. The report as required in Article 37 shall disclose the payments to governments in accordance with paragraph 2-5 and where those payments derive from, in accordance with paragraph 6.

Appendix D: EU Directives requirements

2. The report shall specify the following payments to governments:
 - a. the total amount of payments, including payments in kind, made to each government within a financial year;
 - b. the total amount per type of payment, including payments in kind, made to each government within a financial year.
3. Where payments in kind are made to a government, they shall be reported in value or in volume. Where they are reported in terms of value, supporting notes shall be provided to explain how their value has been determined.
4. If the total amount of payments to a government within a financial year does not exceed 500 000 Euro those payments do not have to be disclosed.
5. The report shall exclude any type of payments made to a government in a country where the public disclosure of that type of payment is prohibited by the criminal law of that country. In such cases the undertaking shall state that it has not reported payments in accordance with paragraphs 1 to 3, and shall disclose the name of the government concerned.
6. Where the payments disclosed in accordance with paragraphs 2 to 5 derive from specific projects the report shall for each government contain a list of these projects.
7. In the case of those Member States which have not adopted the Euro, the Euro threshold identified in paragraph 4 shall be converted into national currency by:
 - a. applying the exchange rate published in the Official Journal of the European Union as at the date of the entry into force of any Directive fixing that threshold; and
 - b. rounding to the nearest hundred.

Article 39

Consolidated report on payments to governments

1. A Member State shall require any large undertaking or any public interest entity active in the extractive industry or the logging of primary forests and governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.

A parent undertaking is also considered to be active in the extractive industry or the logging of primary forests if any of its subsidiary undertakings are active in the extractive industry or the logging of primary forests.

Appendix D: EU Directives requirements

Article 40

Publication

The report referred to in Article 37 and the consolidated report referred to in Article 39 on payments to governments shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

2. The obligation to draw up the consolidated report referred to in paragraph 1 shall not apply to:
 - a. a parent undertaking of a small group, as defined in Article 3(4), except where any affiliated undertaking is a public interest entity;
 - b. a parent undertaking of a medium-sized group, as defined in Article 3(5), except where any affiliated undertaking is a public interest entity; and
 - c. (c) a parent undertaking governed by the law of a Member State which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.
3. An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to government where at least one of the following conditions is fulfilled:
 - a. extremely rare cases where the information necessary for the preparation of the consolidated report on payments to government in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or
 - b. the shares of that undertaking are held exclusively with a view to their subsequent resale.

Appendix E: PWYP reporting proposals

The IASB include the following summary of the Publish What You Pay (PWYP) in their Discussion Paper on the extractive industries:⁸

1. Benefit streams to government:

The significant components of the total benefit streams to government and its agencies should be disclosed on a country-by-country basis. At a minimum, this would include separate disclosure of:

- royalties and taxes paid in cash
- royalties and taxes paid in kind (measured in cash equivalents)
- dividends
- bonuses
- licence and concession fees.

2. Reserves:

Reserves volumes and valuation measures (if required by the future IFRS) should be disclosed on a country-by-country basis.

3. Production volumes:

Production volumes for the current reporting period should be disclosed on a country-by-country basis. Optional disclosure of production volumes by key products and key properties is encouraged.

4. Production revenues:

Revenues from production should be disclosed on a country-by-country basis, with separate disclosure of production revenue attributable to:

Sales to external customers;

Transfers to downstream operations

5. Costs:

The following costs should be disclosed on a country-by-country basis:

- Production costs.
- Development costs.

6. Key subsidiaries and properties:

The names and locations of each key subsidiary and property in each country should be disclosed.

⁸IASB Discussion Paper DP/2010/1 on 'Extractive Activities', pp.146 – 147.

Appendix F:
Country-by-country reporting proposals

In their response to the European Commission public consultation on country-by-country reporting by MNCs, the Tax Justice Network included the following tables detailing their requirements for disclosure (Source 2):

Countries and companies

All MNCs must report the name of each country in which it operates and the names of all its companies trading in each country with the exception of dormant companies. The total number of dormant companies should be disclosed by country of incorporation.

Profit and loss account

Turnover *	Third party	X	
	Intra-group	X	
	Net Total		X
Purchases	Third party	(X)	
	Intra-group	(X)	
	Total		(X)
Labour costs			(X)
Number of employees (note)	X		
Operating profit			X
Finance income		X	
Finance expense		(X)	
Net finance cost			(X)
Operating profit			X
Current tax charge		(X)	
Deferred tax charge		(X)	
Tax charge			(X)
Net profit after tax			X
Dividends paid (Note)	X		

* Hedging, futures and derivative sales and purchases disclosure have been included in country-by-country reporting to show the extent to which profits can be relocated using financial instruments.

Appendix F:
Country-by-country reporting proposals

Balance sheet

Total tangible assets			X
Total intangible assets			X
Total fixed assets			X
Current assets	Third party	X	
	Intra-group	X	
Total current assets			X
Current liabilities	Third party	X	
	excluding tax		
	Corporate tax	X	
	Intra-group	X	
Total current liabilities			(X)
Net current assets			X
Deferred liabilities	Third party	X	
	excluding tax		
	Corporate tax	X	
	Intra-group	X	
			(X)
Net assets, equivalent to shareholders funds			X

Cash flow

Corporation tax paid			X
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