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# *Tax transparency and country-by-country reporting*

## An ever changing landscape

*An update*

*October 2013*

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# Foreword

Since we published our last briefing on tax transparency and country-by-country reporting just over twelve months ago, the introduction of mandatory tax reporting rules has accelerated. The changes covered in this publication include revised guidelines for the Extractive Industries Transparency Initiative, new EU rules for the banking industry, and final EU rules for the extractive and logging industries. We consider the legal challenge that has suspended the implementation of the US rules for reporting payments to governments and finally we look ahead to the discussions in the OECD and the EU on how country-by-country reporting might be developed for all MNCs.

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In recent years, the global economic climate has put many governments under severe pressure as regards their spending programmes and the need to generate higher tax revenues to help with the reduction of public sector deficits. This pressure has included an increasing focus from investors, civil society organisations, the media and others for companies and individuals to be seen to be making their contribution to the public purse. For some, increased transparency around tax is seen as an essential part of the answer to help deal with these issues.

PwC* has been a long term supporter of well-considered transparency around tax reporting, and our development of the Total Tax Contribution methodology and the Building Public Trust Awards aims to encourage greater voluntary disclosure of meaningful information on tax.

The benefits of tax transparency however clearly depend on providing information and not just data. In setting policies on transparency, the question has to be asked "to whom is this information to be provided, and for what purpose?" Mandatory public disclosure requirements have a natural tendency to be inherently prescriptive in nature, leading to the provision of standard data as a "tick-box" exercise as opposed to the clear articulation of information that is more useful to the reader.

So knowing how additional information will be used can be particularly helpful in designing appropriate policies for additional disclosure requirements. The discussion of the principles underlying the Organisation for Economic Co-operation and Development (OECD) proposals in their Base Erosion and Profit Shifting (BEPS) action plan is a good example of these issues being properly considered.

We have concerns regarding the implementation of numerous sets of inconsistent rules and recent moves in the European Union have added to these concerns. The danger is that this will involve significant additional cost and resource requirements for business, and will also create the potential for the data to be misinterpreted and misunderstood by the reader if it is provided without sufficient explanation.

As companies become obliged to make certain information public, they will face the challenge of considering what additional public disclosures might be appropriate, and to consider how best to tailor these to ensure that the data required by mandatory rules is not misinterpreted or misunderstood.

We hope that the details, commentary and comparisons brought together in this publication will help you assess the position and take a view of the approach that you need to follow.

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Tax Transparency and Total Tax Contribution Leader

*In this document, "PwC" refers to the UK member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

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# Introduction

## *Country-by-country reporting initiatives*

We begin this publication by taking a look at the four reporting frameworks that are currently in place or that are in the process of being implemented:

- The Extractive Industries Transparency Initiative (EITI);
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act);
- EU Accounting and Transparency Directives; and
- EU Capital Requirements Directive IV (CRD IV).

The first three of these relate to companies operating in the extractive sector, with the EU Accounting and Transparency Directives also applying to companies active in the logging of primary forests. The EU Capital Requirements Directive IV applies to banks, other credit institutions and certain investment firms.

Sections 1 to 4 each provides a **narrative introduction** to one of these four reporting frameworks, describing their origins as well as outlining their:

- Who does it cover?;
- Key objectives;
- Reporting requirements; and
- Current status.

In Appendices A and B we compare and contrast these four reporting frameworks. The table in Appendix A provides an **overview and comparison of the information requirements** of the **four frameworks**. This is designed as a quick reference point for checking and comparing their different requirements.

Appendix B provides a second table which gives 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.

Appendices C to G provide extracts of the rules, regulations and legislation which support these four initiatives.

Section 5 provides a summary of a number of other tax transparency developments around the world in some selected countries while Section 6 looks at other frameworks which have previously been proposed by Civil Society Organisations (CSOs). These have tended to be more extensive and in some cases intended to cover all multinational corporations (MNCs). These frameworks have been covered in our previous publication[1]. As there have been no significant changes, we have only included high level details of these frameworks in Appendices H and I.

Section 7 takes a look what we expect to happen next. This includes the proposals made this year by the G8, G20 and the OECD and the recently issued memorandum on transfer pricing and country-by-country reporting, and also the proposals coming from the EU to look at the potential for extending the CRD IV requirements to all MNCs, which have been set out in a draft opinion from the European Parliaments Committee on Economic and Monetary Affairs. Extracts from this draft opinion are included in Appendix J.

A list of sources for the information in this publication is provided in Appendix K.

This publication 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 18 October 2013. These initiatives will continue to evolve and users of this report should be aware that regulation in this area is developing quickly.

[1] PwC, August 2012, Tax Transparency and country-by-country reporting http://www.pwc.com/en_GX/gx/tax/publications/assets/pwc-tax-transparency.pdf

# 1. Extractive Industries Transparency Initiative

A new EITI standard was issued in May 2013 which requires certain disclosures while recommending or encouraging others. It also strengthens the role of the country multistakeholder groups.

The EITI is a standard that promotes revenue transparency and accountability in the extractive sector. It involves a multi-stakeholder coalition of governments, companies, investors, civil society organisations, and partner organisations. A multi-stakeholder group (MSG) is responsible for the EITI process in each country that decides to implement the EITI. The decision to implement the EITI by a country is a voluntary one. The EITI International Secretariat oversees the global application of the standard.

### *1.1 Who does it cover?*

Each country that implements the EITI sets up its own MSG which then applies the EITI standard to determine the precise rules for that country. Broadly, however, the EITI will cover all companies extracting natural resources in the country in question, subject to any materiality thresholds applied by the country MSG. A list of the compliant and candidate EITI countries is provided in Appendix D.

### *1.2 Key objectives*

The EITI aims to strengthen governance in resource-rich countries by improving transparency and accountability as to how natural resource wealth is generated and used. The EITI supports improved governance through the verification and full publication of company payments and government revenues from oil, gas and mining. A vital element in the EITI process is the reconciliation by an independent party of the amounts paid by companies to the amounts received by governments.







### *1.3 Latest developments*

The EITI global standard which sets out the rules for implementing countries and MSGs was substantially revised and a new standard was launched in May 2013 at the EITI Global Conference in Sydney.

The revised standard contains the following significant changes:

1. The role of the MSG has been strengthened, with the country work plan having a more central role. The work plan is written by the MSG, and sets out how the EITI will be implemented including timelines and a budget. It should also set out why the country has chosen to adopt the EITI.
2. EITI reports must contain information to provide a better understanding of the context in which extractive companies operate in the country than has sometimes been the case in the past; this includes production figures; details of licenses (ownership, coordinates, dates of application and award); details of revenue allocation to state and local government and a description of the tax regime. Disclosure of production contracts is encouraged and the disclosure of the beneficial ownership of companies active in the extractive sector is recommended.
3. There are new disclosure requirements: public disclosure of payments is now required at a company and project level, greater focus is given to local audit processes, transfers between government and state owned companies must be disclosed and certain transfers between state and local governments must be disclosed.
4. Compliant and candidate countries must produce an annual activity report setting out the EITI activities undertaken in the year, an assessment of progress in meeting and maintaining compliance with EITI requirements, the MSG's responses to and progress in addressing recommendations from validation and reconciliations, and an assessment of progress against the country workplan.
5. The process of country validation will be more frequent and will be managed by the International EITI Secretariat rather than by local countries.
6. The standard has been restructured based on seven requirements (see Appendix C) rather than the previous 21 provisions.
7. Data will need to be machine readable allowing for easier analysis by stakeholders.

The EITI was discussed at G8 meetings in Loch Erne in June 2013 and France, the US and the UK all committed to seek candidacy status by 2014. Italy will seek candidacy status as soon as possible, Canada is considering developing an equivalent regime, Germany is planning to test EITI implementation in a pilot region and Russia and Japan will encourage national companies to become supporters of EITI.

## 1.4 Reporting requirements

The EITI has 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. Certain disclosures are required, while others are only encouraged or recommended.

Implementation itself, however, is the responsibility of individual country MSGs and therefore there will continue to be differences between countries.

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 MSG 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 C):

1. The host government's production entitlement;
2. National state-owned enterprise production entitlement;
3. Profits taxes[2];
4. Royalties;
5. Dividends; and
6. Bonuses, such as signature, discovery and production bonuses.
7. Licence fees, rental fees, entry fees and other considerations for licences and/or concessions.
8. Any other significant payments and material benefits to government.

The data must be presented by individual company, government entity, revenue stream and by project[3].

Other key disclosure items include:

- The proceeds from the sale of the state's share of production or other revenues collected in kind.
- The provision of infrastructure, goods, services in exchange for exploration or mining concessions.
- The value and nature of social expenditures if they are required by law; the disclosure of voluntary social expenditure is encouraged.
- Revenues from the transportation of oil, gas and minerals where these are one of the largest revenue streams in the extractive sector.

[2] As EITI focusses on reconciling amounts paid by companies and amounts received by governments, the tax amounts disclosed are amounts paid not amounts accrued.
[3] MSGs should apply the definition of project in a way that is consistent with how the term is used and defined in the Dodd-Frank Act and in the EU Accounting Directive.



Extractive Industries Transparency Initiative

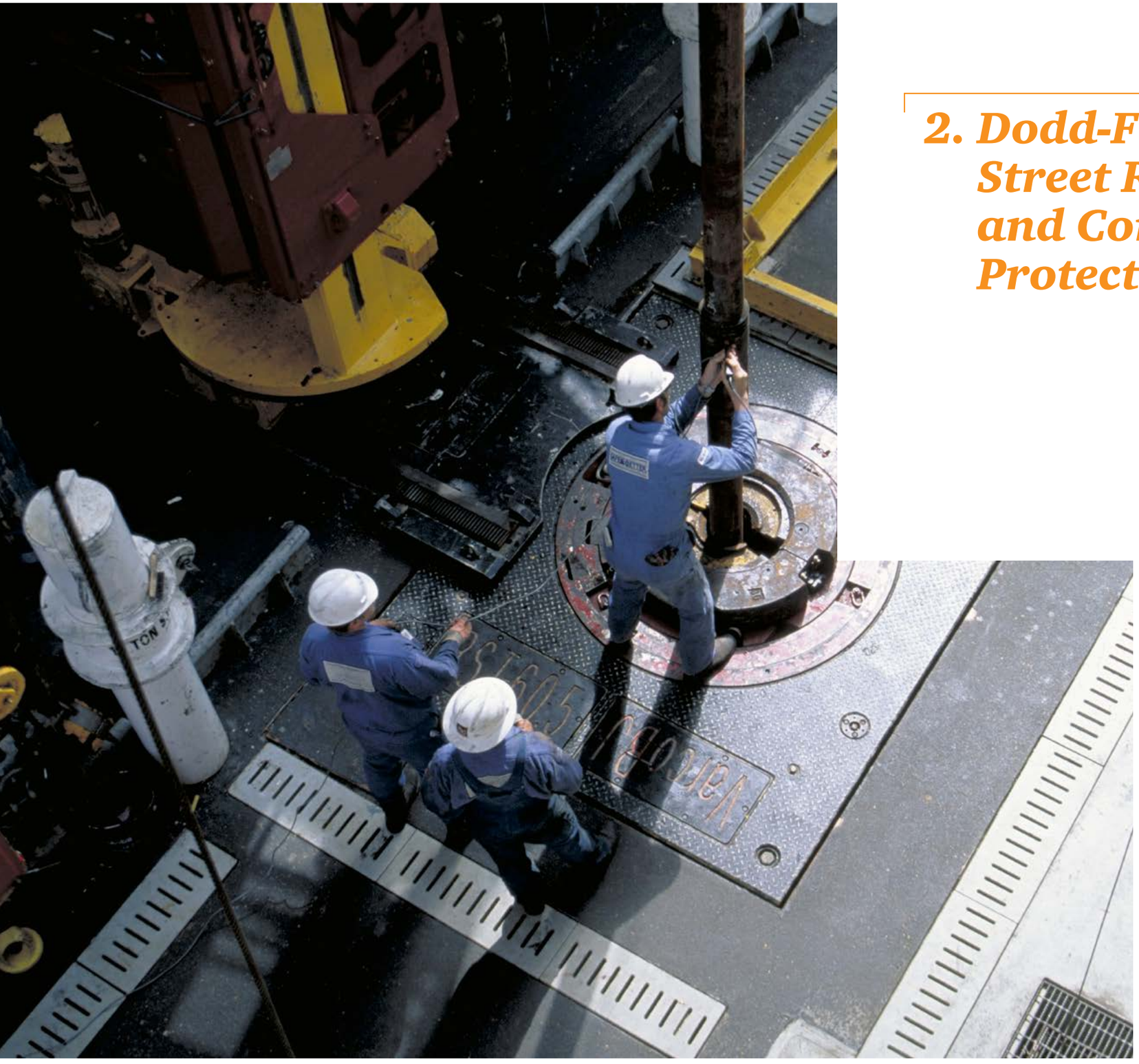


- The ownership of exploration and mining licenses should be disclosed, preferably via a publically available register, or failing that in the EITI report.
- Disclosure of the beneficial ownership of extractive companies is recommended.
- Public disclosure of contracts for the exploration and exploitation of natural resources is encouraged.

## 1.5 Issues requiring clarification

The new standard is already in effect, and the existing EITI countries are in the process of deciding how to implement the new requirements in their territories. We understand that the International Secretariat is working with countries to help in the implementation of the new standard and that a number of technical working groups have been established to develop detailed guidance.

# 2. 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, but these rules are currently suspended following a legal challenge.

On 21 July 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), of which section 1504 requires companies in the extractive industry to report all payments made to governments. These provisions require the Securities and Exchange Commission (SEC) to issue rules in order for them to be implemented. The rules were initially implemented by the SEC on 22 August 2012, but these were successfully challenged by the American Petroleum Institute and on 2 July 2013, the District Court for the District of Columbia "vacated and remanded"[4] the SEC's rules. The country-by-country disclosures in the Act are therefore currently suspended until the SEC has introduced revised rules. There has been no announcement to date as to when the SEC expects the new rules to be ready, nor a timeline for their implementation.

## 2.1 Who does it cover?

Section 1504 of the Dodd-Frank Act includes provisions which will require SEC registered[5] extractive industry companies (upstream and downstream) to report all payments made to US Federal and foreign governments.

[4] Vacated and remanded is a US legal term which means, broadly, that the rules were sent back (remanded) to the SEC for revision, and that no part of the rules comes into effect (are vacated) until the rules have been rewritten.
[5] The provisions of Dodd-Frank Act section 1504 apply to issuers with either debt or equity registrations



Dodd-Frank Wall Street Reform and Consumer Protection Act



## 2.2 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…"*[6]

While this quote suggests an intention for the payments to be disclosed publically, the Court case highlighted the fact that Section 1504 does not explicitly require each company's disclosure of payments to be public, but rather only requires that the data is made public in a summary format. It remains to be seen whether the SEC, in its revised rules, will maintain that public disclosure by company is central to achieving the stated objectives.

## 2.3 Reporting requirements

The reporting requirements are laid out in the Dodd-Frank Act itself, and in the implementing rules issued by the SEC. The requirements below are taken from the SEC rules issued on 22 August 2012 which, as mentioned above, were vacated and remanded by the District Court of Columbia. As the SEC is required by the court to rewrite the rules, the reporting requirements may change. The aspects of the rules that were specifically called into question by the court are covered in the "Status" section below.

Until the SEC issues revised rules, companies are not required to implement the reporting requirements from section 1504 of the Dodd-Frank Act.

Section 1504 of the Dodd-Frank Act requires SEC registered companies in the extractive industries to file an annual SEC report disclosing 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. The view of the Court was that the Dodd-Frank Act did not necessarily require this annual report to the SEC to be made public, and that the SEC was only obliged to make public a compilation of the data submitted to it by the individual companies.

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."*[7]

[6] 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
[7] Dodd-FrankWall Street Reform and Consumer Protection Act15 U.S.C. 78m (q)(1)(C)(ii), p.845.

On 22 August 2012, the SEC adopted rules that specified the definition of payment should be interpreted as including:

- 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 accruals 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 filer that made the payments;
- the government that received the payment and the country in which the government is located;
- the project of the filer to which the payments relate.

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

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

The Section 1504 disclosures must be made, no later than 150 days after the end of the company's fiscal year, via Form SD, with the required information included in a separate electronic format exhibit tagged using xBRL. The SEC rules do not require the information on Form SD to be subject to external audit.

### *2.4 Status*

Following the Court judgment of 2 July 2013, companies are not required to report under Section 1504 of the Dodd-Frank Act until such time as the SEC has issued redrafted rules. Implementation of these transparency provisions is therefore delayed and to date the SEC has provided no details as to when new rules may be ready or from when they might apply.



Dodd-Frank Wall Street Reform and Consumer Protection Act



In its decision the court commented on two specific aspects of the rules:

- The court found that, contrary to the determination of the SEC, there was no explicit requirement to publish the payment data on a company by company basis. Companies have to submit the data to the SEC on a country by country and project by project basis, but the SEC can choose to publish that data in an aggregated form.
- The SEC's reasoning for the lack of an exemption for countries which prohibit disclosure of payments to governments was held to be "arbitrary and capricious". If the SEC wishes not to grant an exemption it could still do so, but that decision must be the product of reasoned decision making.

The court opinion leaves it open for the SEC to mandate public disclosure on an individual company basis, and for it not to provide an exemption for countries that forbid such disclosure, but in doing so the SEC will have to articulate the analysis undertaken and the conclusions reached.

# 3. EU Directives on Accounting and Transparency

# The EU Accounting Directive rules on the reporting of payments to governments by extractive and logging companies are currently being transposed into domestic legislation in the Member States.

In September 2010, the European Parliament made a request to the European Commission for action in connection with reporting of payments to governments by the extractive sector. This was in response to international developments and in particular to the introduction of section 1504 of the Dodd-Frank Act in the US.

Following negotiations between the European Commission, the Council of the European Union and the European Parliament, amendments to the EU Accounting and Transparency Directives were proposed to introduce new reporting requirements for listed and non-listed large companies active in the extractive industry or in the logging of primary forests. The amendments to the Accounting Directive appeared in the Official Journal on 29 June 2013. The amendments to the Transparency Directive are expected to enter the Official Journal of the European Union in late 2013.

## *3.1 Who does it cover?*

The new Accounting Directive country-by-country reporting rules cover EU public interest entities (notably listed entities) and large EU undertakings in the extractive industries and the logging of primary forests. The criteria for a large undertaking are those that apply to the Accounting Directive as a whole, rather than being particular to the country-by-country rules. A large undertaking is thus defined as one which exceeds two of the three following criteria: turnover of €40 million; total assets of €20 million; and 250 employees.

We understand that in deciding whether an undertaking is large, it should be considered on a consolidated rather than a stand-alone basis. A medium sized European holding company that holds a large extractive company in a third country would therefore be considered a large undertaking for these purposes and so have to report payments to government arising from the extractive activities of its subsidiary company. This would also apply where the European holding company in question is a subsidiary of a company based in a third country.



EU Directives on Accounting and Transparency

An undertaking active in the extractive industry means an undertaking involved in the extraction of crude petroleum or natural gas, or involved in the mining and quarrying of various commodities. It does not include entities that only provide support activities.

Parent undertakings are required to prepare a consolidated report if any subsidiaries are active in the stated industries. Such a consolidated report should only include payments resulting from those activities.

An entity is not required to produce a report if it is a subsidiary of a parent that produces a consolidated report that includes all payments made by the subsidiary. Undertakings can be excluded from a parent's consolidated report if:

- there are severe long-term restrictions on the parent's ability to exercise its rights in relation to the undertaking; or
- the parent holds the shares of the undertaking exclusively with a view to re-sale.

The directive also allows undertakings to be excluded where the necessary information cannot be obtained without disproportionate expense or delay, but states that such cases are expected to be extremely rare.

There is no exception for payments where public disclosure of the payment is prohibited by legislation in the country to whose government the payment is made.

The EU Transparency Directive will extend these provisions to all companies in the extractive and logging sector that are listed on recognised stock exchanges in the EU, regardless of their size. The Directive as currently drafted sets a reporting deadline for these companies of six months after the company's year-end.

## *3.2 Key objectives*

Companies are required to 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. A 'government' is defined as 'any national, regional or local authority of a member state or of a third country'; this includes departments or agencies controlled by that authority.

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 for the exploitation of local oil/gas fields, mineral deposits and forests. The intention is to allow these communities to demand more effectively that government accounts for how the money is spent locally.

## 3.3 Reporting requirements

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

1. production entitlements;
2. taxes on income, production or profits[8];
3. royalties;
4. dividends;
5. signature, discovery and production bonuses;
6. licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
7. payments for infrastructure improvements

Payments below €100,000 (whether made as a single payment or as a series of related payments) do not need to be disclosed.

Disclosures are required, on a country-by-country basis, of:

- the total amount of payments, including payments in kind, to each government during the year; and
- the total amount per type of payment to each government.

Where payments have been attributed to a specific project, this information should also be disclosed on a project-by-project basis.

Payments in kind are required to be reported by value or, where applicable, by volume (e.g. in the case of production allowances). If reported by value, the method used to determine the value should be disclosed.

These provisions are comparable to the US Dodd-Frank Act proposals. However, there are several differences to note:

- The logging industry is within the scope of the reporting requirement in addition to the oil, gas and mining industries (in the US the rules are restricted to the oil, gas and mining sectors).
- The EU rules apply to large unlisted companies, as well as listed companies, whereas the US rules are restricted to listed extractive companies only.
- Similar to the now vacated SEC rules, there is no exemption within the EU rules from disclosing payments made to governments in countries where such disclosure is prohibited. In the case of the US rules however it remains to be seen whether such an exemption will be included in the future.
- The EU rules require public disclosure of company data – as noted above it is now not certain that public disclosure of this information will be required under the US Dodd-Frank Act proposals.

[8] The figure to be reported is cash tax payments made, not tax on an accruals basis.



EU Directives on Accounting and Transparency

There is no prescribed format for the report. It is expected that a tabular presentation will often be used and it is understood that the UK Government is working with the extractive industry to encourage the industry to develop best practice guidance in this regard.

The report will not form part of the financial statements under the International Financial Reporting Standards (IFRS), and the directive does not specify a requirement for the report to be audited. Individual Member States can introduce their own requirements in this area.

The deadline for the publishing of reports is not included in the EU Accounting Directive, but will be determined by each Member State upon implementation into domestic law. For issuers covered by the proposed amendments to the EU Transparency Directive, the deadline for the reports of payments to governments is expected to be six months after the financial year end.

## 3.4 Status

Each EU Member State is now responsible for passing the requirements of the EU Accounting Directive into local legislation by 20 July 2015. The Directive provides that the requirements will come into effect for financial years beginning on or after 1 January 2016 at the latest.

Certain EU Member States, notably the G8 members France, Italy, Germany and the UK have committed to implementing the EU Accounting Directive earlier than this.

The text of the EU Transparency Directive was agreed by the European Parliament on 12 June 2013 and adopted by the Council of the EU on 17 October 2013. It is expected to be published in the Official Journal of the EU in late 2013. The Directive will then need to be transposed into domestic legislation.

Within three years of the transposition deadline for these directives, the European Commission will review and report on the implementation and effectiveness of the requirements. The review will take into account international developments and will consider the extension of the reporting to additional industry sectors, whether the report should be audited and if additional information such as employee numbers should be included. They will also consider the feasibility of introducing an obligation to conduct due diligence into supply chains when sourcing minerals.

EU Directives on Accounting and Transparency


# 4. EU Capital Requirements Directive (CRD IV)

Proposals for tax transparency requirements for credit institutions and investment firms were first made in February 2013 as part of the final negotiations of the EU Capital Requirements Directive IV. The EU Commission had begun work on CRD IV in 2009 and the legislation had been in development ever since, but the tax transparency requirements were only suggested at this very late stage.

From the first suggestion that these additional requirements should be included to their formal adoption took a little over four months, and they will take effect ahead of the EU and US requirements for the extractive industries. The final tax reporting provisions were published in the Official Journal of the EU in June 2013 in Article 89 of CRD IV. Implementation by Member States is required by 1 January 2014, with the first reporting from 30 June 2014. Article 89 requires institutions to disclose profits and turnover, profit taxes, government subsidies, number of employees and the geographical location of activities.

### *4.1 Who does it cover?*

Article 89 of CRD IV applies to EU "institutions" as defined in the associated Capital Requirements Regulations. Broadly these are banks, building societies and other credit institutions as well as investment firms as defined in the Markets in Financial Instruments Directive, subject to certain exclusions. The detailed definitions however are complex and their application in practice can be uncertain.

It is important to note that not only does Article 89 apply to EU headquartered groups, but also to the EU operations of groups headquartered in third countries, although each situation needs to be looked at on a case by case basis to determine which entities are within the scope of the article.





### *4.2 Key objectives*

The CRD IV package was primarily developed to implement "Basel III"[9] into EU law which has the intention of addressing perceived weaknesses in existing financial sector regulation following the financial crisis in 2008 and 2009. The objective of the package as a whole is to reduce the risk of a further banking crisis.

Recital 52 to the Directive states:

*"increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of citizens of the Union in the financial sector. Mandatory reporting in that area can therefore be seen as an important element of the corporate responsibility of institutions towards stakeholders and society."*

### *4.3 Reporting requirements*

Article 89 requires affected institutions to disclose on a consolidated basis for each financial year the following information:

1. name(s), nature of activities and geographical location;
2. turnover;
3. number of employees on a full time equivalent basis;
4. profit or loss before tax;
5. tax on profit or loss; and
6. public subsidies received.

The information must be given by Member State and by third country in which the institution has an establishment.

All institutions affected will be required to report the information in (a) – (c) of Article 89 by 30 June 2014. For the first year only, Globally Systemically Important Institutions (G-SIIs) must report to the European Commission, on a confidential basis, the information in (d) – (f) of Article 89, again by 30 June 2014.

The Commission will review the confidential disclosures in the first year to identify if there are likely to be any negative consequences were the information to be disclosed publically. If there are any negative consequences, the Commission may propose modifications to the disclosure requirements otherwise, from 2015, all institutions will be required to disclose publically all of the information in Article 89, where possible as an annex to the institution's annual consolidated financial statements.

The information will require an annual audit in accordance with EU Directive 2006/43/EC.

[9] Basel III or the Third Basel Accord was agreed by the members of the Basel Committee on Banking Supervision in 2010-11. It is a global, voluntary regulatory standard on bank capital adequacy, stress testing and market liquidity risk intended to strengthen bank capital requirements.

## 4.4 Issues requiring clarification

There are a number of uncertainties to resolve in implementing Article 89 of CRD IV. As each Member State will implement the article separately, there is a risk of differences of interpretation between countries.

Some of the most important issues are as follows:

- **Which institutions are affected –** there are difficulties in applying the definition of institution in practice, in particular to complex group structures, to entities other than companies and to entities that are not themselves institutions but which sit within groups containing institutions. Furthermore, institutions are required to report on their "establishments" which is not defined. The expectation is that establishment would be taken to mean subsidiaries and branches.
- **The form the report should take –** it is not clear what format reporting under Article 89 will take; whether there will be a standard form or whether institutions can adapt the reporting to fit their circumstances. The extent to which narrative contextual reporting can be included is also unclear.
- **The timing of the report –** while the initial reports have to be submitted by 30 June 2014, it is not clear for which period companies would be expected to report or how the requirement to include the reporting in financial statements would be met by companies. Practical difficulties are anticipated in particular for companies with financial years ending shortly before the 30 June 2014 deadline.
- **The form of the consolidation –** there is some question as to whether this should follow a group's accounting or regulatory consolidation. Other issues are how to include associates and joint ventures and how to treat intra-group transactions.
- **The jurisdiction under which to report certain items –** for some entities it may not be clear to which jurisdiction the amounts should be attributed, e.g. for a company registered in one country but tax resident in another, or if, perhaps due to the application of controlled foreign company rules, a company pays tax in one country in respect of profits arising elsewhere.
- **The definition of turnover –** as banks do not report turnover, this term needs to be interpreted in line with financial reporting for banks. One option is for this to be net interest income, plus other income.
- **The definition of taxes on profit –** while this is generally believed to include corporate taxes, it is not clear if other taxes should be included. It is also not clear whether this is intended to be on a cash paid basis or on an accounting basis including deferred tax, though the reference to taxes paid in Recital 52 to the Directive could suggest that the intention was to require reporting on the basis of cash tax paid.





- **Interpretation of the number of employees –** institutions will need to determine whether to include sub-contractors and those employees who work in more than one country or for more than one legal entity.
- **Prevention of double reporting –** Article 89 does not contain provisions exempting a company from reporting if its data has been reported elsewhere such as in the parent's group reporting.
- **Materiality –** while Article 89 requires the disclosures to be audited, there is no materiality threshold set for reporting. Section 1504 of the Dodd-Frank Act and the EU Transparency and Accounting Directives set de minimis limits for the reports that they mandate.

## 4.5 Status

Following publication in the Official Journal of the EU on 27 June 2013, the Credit Requirement Regulation is directly applicable to institutions in Member States, whilst CRD IV requires national legislation to implement it. The transposition of the Directive into national legislation is required by 31 December 2013.

The various Member States are at different points within the transposition process, though some have said that they will need longer than the six months permitted by the Directive. As part of the transposition process we expect that the Member States will clarify some of the points of uncertainty that we highlight above, either in the domestic legislation or in accompanying guidance.

In the UK, HM Treasury (the UK Finance Ministry), launched a consultation on 20 September 2013[10] requesting the views of business on many of the issues raised above by 18 October 2013.

[10] https://www.gov.uk/government/consultations/capital-requirements-directive-4-country-by-country-reporting

# 5. Other tax transparency reporting around the world

In addition to the initiatives addressed in the earlier sections of this publication, a number of countries have introduced, or plan to introduce, tax transparency rules. We cover some of these in this section. This list is not exhaustive, but highlights some of the regimes of which we are aware.

## *5.1 Australia*

On 29 June 2013 Australian legislation designed to improve tax transparency received Royal Assent.

The amendments contained in the legislation will:

- require the Commissioner of Taxation to publish the tax payable by corporate taxpayers with accounting incomes of $100 million or more a year, and the resource rent tax liabilities of entities subject to the mineral resource rent tax or petroleum resource rent tax;
- ensure the publication of aggregate collections for each Commonwealth tax; and
- enhance information sharing between Government agencies.

## *5.2 Canada*

On 12 June 2013 the Canadian Prime Minister, Stephen Harper announced a commitment to introduce tax reporting obligations for Canadian companies operating in the extractive sector.

Two days later, the Canadian Resource Revenue Transparency Working Group issued its draft framework for reporting payments to government by the extractive sector. This framework draws heavily on existing reporting regimes including EITI, Dodd-Frank Section 1504 and the EU Accounting and Transparency Directives.





Following a period of consultation, the framework is expected to be finalised in late 2013. We expect that this framework will play a central role in the development of any mandatory transparency reporting requirements in Canada. However, as Canadian securities regulation is undertaken at a provincial rather than a federal level it is expected that there will be a number of challenges in agreeing a mandatory reporting regime.

## *5.3 Denmark*

In 2012 the general duty of confidentiality owed by the Danish tax authorities to taxpayers was amended to increase the transparency of corporate tax payments.

From 1 July 2012, the Danish tax authorities have been able to disclose publically the following data on companies:

- the taxable income after set-off of losses from previous years;
- losses from previous years utilised in the year;
- the tax calculated for the assessment year; and
- the tax liability rule applying to the company.

The disclosures may be made together for jointly taxed companies specifying the companies included under the joint taxation.

The disclosures are available on the Danish tax authorities' website approximately one month after the authorities have sent out the annual assessment notice.

## *5.4 Finland*

In Finland, the following items are made available by the tax authorities in connection with companies' tax affairs:

- Name;
- Home municipality;
- Business identification number;
- Total amounts of taxable income;
- Amount of tax liability for the year;
- Outstanding tax payment or refund owed to the company.

The information is available by request from local tax offices. At the beginning of November the corporate income tax information for the previous tax year is made public. What is disclosed is the information as at that time (when the regular tax assessment closes). If there are any changes or corrections to taxable income after this date, no update is made.

## *5.5 Norway*

In Norway, 'tax lists' are made available to the public through the Tax Directorate's home page (www.skatteetaten.no). A specific login process must be followed, identifying the person who is searching for information. One person may carry out a maximum of 500 searches in one month.

The tax lists include the following information:

- Name;
- Company registration number;
- Postal code and place/city;
- The municipality where the company is resident;
- Net income;
- Net wealth/capital; and
- Assessed tax(es).

The media is allowed to see, but not publish, a complete tax list. The media can however publish data on specific companies and can also publish lists of the top tax payers.

## *5.6 Sweden*

According to Swedish constitutional law, there is a strong principle of access to public records. This principle implies that official documents are available to the general public unless there is a specific legal restriction. This principle applies to tax related documents and means that the following information can be freely obtained from the tax agency and/or the administrative courts for individuals and corporate entities:

- Decisions on direct and indirect tax liabilities;
- Amounts of taxable income and tax base for the Swedish pension, property and yield tax;
- Excerpts from a company's tax account at the Swedish Tax Agency containing details of tax payments made during the year relating to direct taxes, VAT and social security contributions;
- The final notice of tax assessment (i.e. the tax agency's decision on the final corporate income tax, pension, property and yield tax for the year as well as information regarding possible tax losses);
- Tax agency decisions and court rulings in tax procedures; and
- Advance rulings from the Board of Advance Rulings (although not parts of the ruling that may identify the parties involved).

Although the authorities do not publish such information on their websites, it is available upon request and the authorities are forbidden by law from inquiring as to why the information is requested and by whom.

# 6. Other civil society initiatives

Civil Society Organisations (CSOs) have promoted their own versions of 'country-by-country reporting' over a number of years. The essential elements of these proposals have not changed since our previous tax transparency and country-by-country reporting publication. The most prominent CSOs and their approach are considered at a high level below.

## *6.1 Publish What You Pay*

Publish What You Pay (PWYP) is

*"a global network of civil society organisations united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries."*

In 2002, Publish What You Pay was launched as a specific campaign, calling for extractive companies to publish what they paid to governments.

Over the next ten years the coalitions and members of PWYP expanded their work along the value chain as the importance of a range of transparency issues emerged. The organisation has therefore widened its objectives to cover transparency and accountability at all points in the extraction process from the determination of what natural resources are available, to whether and how to extract them, to how the revenues raised are spent and the decommissioning of extractive operations.

These expanded objectives and the strategy of PWYP are set out in its strategy document "Vision 20/20"[11].

While the principle that extractive companies should publish what they pay remains central to the work of PWYP, it is now only a part of that work. PWYP is supporting the publication of data on payments in the following ways:

- Support for an accounting standard for the extractive sector including the publication of payments to government. In April 2010 the International Accounting Standards Board (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 (see Appendix H). The IASB's extractive activities project is currently on hold following the end of the consultation, in October 2010, of the Discussion Paper.
- Supporting the introduction of country-by-country reporting of tax and other financial data through, for example, inclusion in stock market listing regulation or the regulation of accounting standards. In this context, PWYP has campaigned for Section 1504 of the Dodd Frank Act and Chapter 10 of the EU Accounting Directive.
- Involvement in the EITI to push for more rigorous policies and processes to ensure the global standard (and reputation) is upheld. All civil society representatives on the EITI board are currently PWYP members.

[11] http://extractingthetruth.org/vision2020.html

## *6.2 Tax Justice Network*

The Tax Justice Network (TJN) is an independent organisation launched in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation and comprises individuals and organisations from a range of sectors including academics, financial professionals, development organisations, civil society organisations, lawyers and trade unions. TJN 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.

Almost since its inception, TJN has been an advocate of comprehensive country-by-country reporting including not only details of taxes paid, but also full financial information in the form of country-by-country income statements and balance sheets.

A summary of the full country-by-country reporting referred to by TJN is provided in Appendix I and further details are available in our previous publication.

# 7. What's coming next?

What's coming next?

## 7.1 Proposals from the G8, G20, and the OECD

Following heightened public and media interest in tax in the UK in late 2012, tax became one of the central themes of the UK's presidency of the G8 in 2013. On 2 January 2013, David Cameron, the UK Prime Minister, wrote to the other G8 leaders setting out his three key themes for the G8; namely trade, tax and transparency. On tax he said:

*"We know that in a globalised world, no one country can, on its own, effectively tackle tax evasion and aggressive avoidance. But as a group of eight major economies together we have an opportunity to galvanise collective international action. We can lead the way in sharing the information to tackle abuses of the system, including in developing countries, so that governments can collect the taxes due to them."*

At the G8 talks at Loch Erne in Northern Ireland in June 2013 the G8 committed to:

*"work to create a common template for multinationals to report to tax authorities where they make their profits and pay their taxes across the world."*

and, to:

*"empowering people to hold governments and companies to account."*

The G8 committed to take action to raise standards of transparency in the extractive sector and to make progress towards common global reporting standards. The stated intention is to improve accountability, reduce the space for corruption and other illicit activities and to ensure that citizens benefit fully from the extraction of natural resources.

The global reporting standards would apply to both countries with significant domestic extractive industries and the home countries of large multinational extractive corporations.

The G8 has encouraged countries to implement equivalent mandatory reporting rules with a view to creating an international reporting regime that avoids duplicate reporting burdens on business. They state that these global standards should move towards project-level reporting, but have also specified that the disclosures need only be made to relevant governments or their tax authorities.

The G8 have also stated their support for the OECD's work to tackle base erosion and profit shifting which has been initiated at the request of the G20. This includes the intention to create a common template for multi nationals to report to tax authorities where they make their profits and pay their taxes across the world. In February 2013, the OECD published an initial report[12] on its activities in connection with base erosion and profit shifting (BEPS). This report outlined the BEPS issues drawing on available data and research and set out the need for an action plan to address these issues on an international basis.

The BEPS action plan that followed on from this initial report was issued on 19 July 2013 [13] and contained 15 actions to address a range of issues around tax transparency, accountability, information exchange and other potential changes to international taxation. Throughout the action plan, there is an emphasis on the need for international agreement and cooperation to minimise the need for nations to act unilaterally. Another theme that recurs throughout the action plan is that disclosures by companies in relation to tax should be made to tax authorities and not in public reporting.

Action 13 focuses on country-by-country reporting in the context of transfer pricing documentation. Rules are to be developed which will apply to all MNCs. Using a common template they will be required to provide all relevant governments with necessary information on their global allocation of income, economic activity and taxes paid. On 3 October 2013 the OECD released its "Memorandum on Transfer Pricing Documentation and Country by Country Reporting". This sets out some of the key issues that in 'the OECD' sees in designing the common template envisaged by action 13 and sets out the themes to be discussed at a consultation on 12-13 November 2013. The emphasis is on collecting information that will assist tax authorities in assessing transfer pricing risk, but which will not be unduly burdensome for businesses to collect.

## 7.2 Proposals for the European Union

Michel Barnier (European Commissioner for the Internal Market and Services) indicated the EU Commission's intention to introduce tax reporting requirements for all large companies and groups in a manner which is similar to those set out in Article 89 of CRD IV.

The Commission tabled a proposal to further amend the Accounting Directive (Directive 2013/34/EU) on 16 April 2013 in relation to non-financial and diversity disclosure requirements for large companies. The proposal was then forwarded to the Council and the European Parliament for consideration. In addition to recommending requirements relating to country-by-country reporting similar to those in CRD IV for large companies, the proposal also includes a preference for disclosures to be audited.

On taking up the Council Presidency on 1 July 2013, the Lithuanian Presidency identified this proposal as a priority. However, there is no information yet available publicly on progress in the negotiations between Member States.

[12] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing http://dx.doi.org/10.1787/9789264192744-en

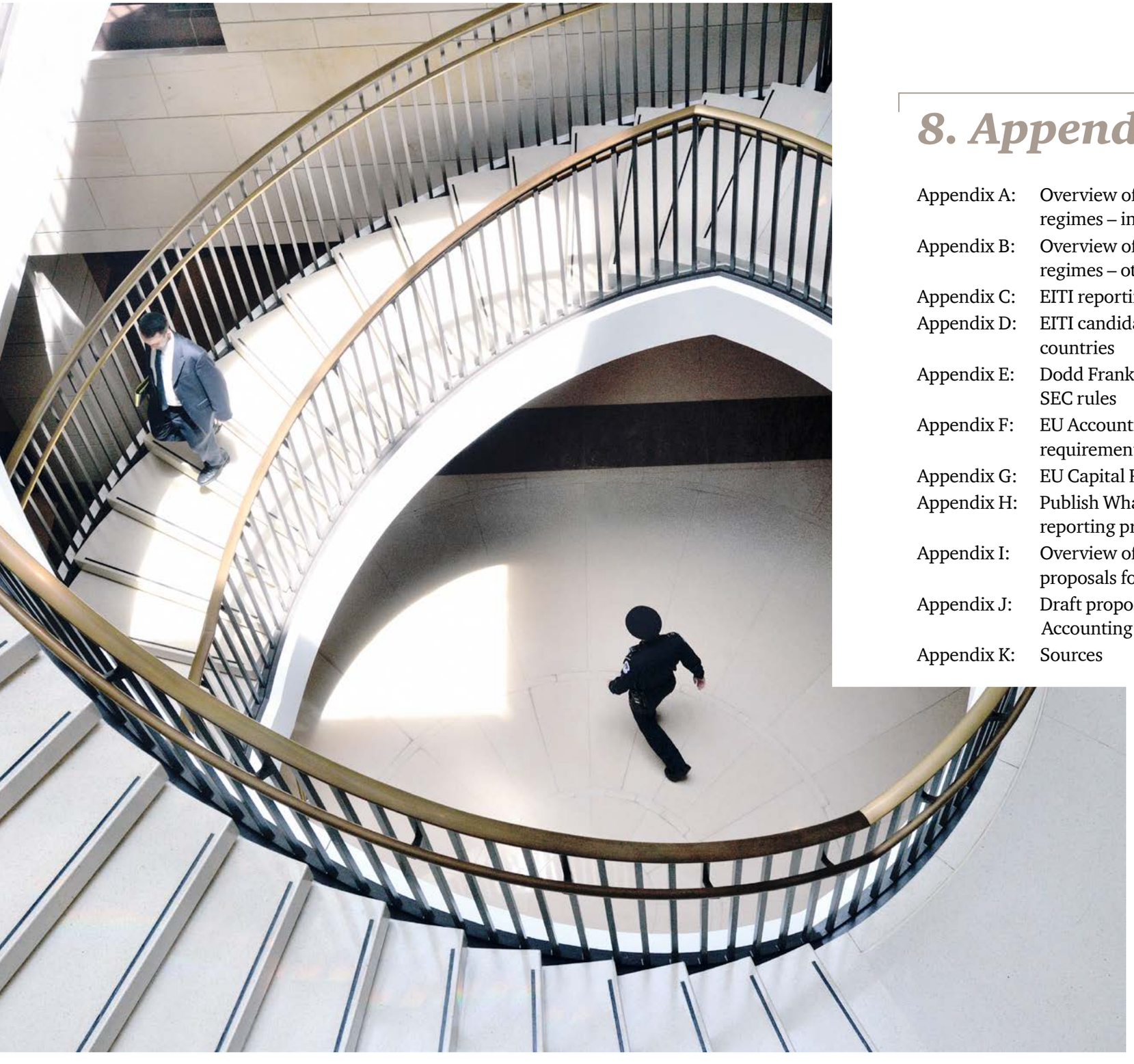
[13] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en

In the European Parliament, although the Legal Affairs Committee (JURI) will take the lead in developing and negotiating the Parliament's position on this proposal, it will receive opinions from no fewer than seven other Parliamentary committees in doing so, including the Economic and Monetary Affairs Committee (ECON).

At its meeting on 17 October 2013 ECON largely supported the Commission's proposal but considered some preliminary amendments proposed by Sharon Bowles, the Chair of ECON and also the MEP responsible for guiding the ECON's opinion on this proposal, including one that would require companies to provide a 'description of the undertaking's tax planning arrangements' proposing further disclosures of information which would 'assess the proportionality of tax reduction methods employed by an undertaking'. Further amendments to the ECON opinion are to be considered on 6 November and a vote taken in committee on 25 November. Once the opinion is agreed in ECON, it will be forwarded for consideration to JURI which will then decide whether to include these amendments in its final position for subsequent negotiation with the Council and the European Commission in 'trilogues'. Extracts from the amendments proposed by Sharon Bowles are included in Appendix J.

### *7.3 Proposals for the US*

On 19 September 2013 Senator Levin introduced a bill, the "Stop Tax Haven Abuse Act", in the Senate which contains provisions on country-by-country reporting. These provisions would require SEC registered companies to publically disclose details of tax paid and certain financial data by company including revenues and cost of sales split between intra-group and third party transactions. While Senator Levin has introduced similar legislation in prior years (and that legislation has not been enacted), it is interesting to note that the proposed country-by-country requirements in this recent bill are similar to the disclosure requirements of CRD IV.



# 8. Appendices

## *Appendix A:*
## Overview of country-by-country reporting regimes – information requirements

| Reporting criteria | | | Initiative name | | | |
|---|---|---|---|---|---|---|
| | | | EITI Framework | Dodd-Frank | EU Accounting Directive | CRD IV |
| Names of institutions, nature of activities and geographical location. | | | x | x | x | ✓ |
| Payments to government | Production entitlements | Host government's production entitlement | ✓ | ✓ | ✓ | x |
| | | National state-owned company production entitlement | ✓ | ✓ | ✓ | x |
| | Profit taxes(*) | | ✓ | ✓ | ✓ | ✓ |
| | Other taxes on income, profit or production e.g. petroleum revenue tax(*) | | ✓ | ✓ | ✓ | x*** |
| | Royalties | | ✓ | ✓ | ✓ | x |
| | Dividends | | ✓ | ✓ | ✓ | x |
| | Production, signatory, discovery and other bonuses | | ✓ | ✓ | ✓ | x |
| | Licence fees, rental fees, entry fees and other considerations for licences and/or concessions | | ✓ | ✓ | ✓ | x |
| | Public susbidies received(*) | | x | x | x | ✓ |
| Reserves volumes | | | x | x | x | x |
| Production volumes** | | | ✓ | x | x | x |
| Revenues | | | x | x | x | ✓ |
| Numbers of employees | | | x | x | x | ✓ |
| Profit or loss before tax (*) | | | x | x | x | ✓ |

* Under CRD IV, for the first year only, Globally Systemically Important Institutions must report this information by 30 June 2014. From 2015 all institutions may be required to publically disclose this information.
** Disclosed in aggregate as part of the context in EITI reports, not disclosed on an individual company basis
*** Other taxes on profit maybe in scope

**Appendix B:**
Overview of country-by-country regimes – other key aspects

| Initiative name | EITI Framework | Dodd-Frank (proposed) | EU Accounting Directive | CRD IV |
|---|---|---|---|---|
| Who needs to report? | Extractives industry companies involved in exploration and production, i.e. upstream activities in countries which have adopted the EITI. | All extractive industry companies registered on the SEC, i.e. upstream and downstream, including companies with either equity or loan stock listings. | 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 €40m; total assets €20m and employees 250. | Institutions as defined in the associated Capital Requirements Regulations. Broadly these are banks, building societies and other credit institutions, as well as investment firms defined in the Markets and Financial Instruments Directive (subject to certain exclusions). Institutions are required to report on their establishments (not defined) but this is taken to mean subsidiaries and branches. |
| Payments to which levels of government? | Country multistakeholder groups 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).<br>Payments to be attributed to a specific project unless made at an entity level. | It is not clear which levels of government are included, as it is not clear which profit taxes are in scope (though corporate income tax and other profits taxes are likely to be in scope). |
| Materiality | All material revenue streams must be reported.<br>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 of $100,000. | Companies are required to report all payments over €100,000. | As the disclosures are to be audited, it is expected than standard audit materiality rules would apply. |
| Reporting timeframe | Country multistakeholder groups 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 a yearly basis. Listed companies to report within six months of financial year end. Timeframe for unlisted companies to be determined by Member States. | All institutions affected must report by 30 June 2014, and annually thereafter. |
| Where the data needs to be reported | Companies need to report to the EITI Country Program using the relevant program's template. EITI country reports are publicly available in fully compliant EITI countries. | Companies report on separate annual, electronic-format 'exhibits' to be filed alongside reports filed with the SEC (Form 10-K, Form 20-K or Form 40-F). | The companies should prepare and make public a report on the payments made to governments on annual basis. | Where possible information must be reported as an annex to the institution's annual or consolidated financial statements. |
| Level of data aggregation | Data to be reported at an individual company and individual project level. | Company data to be reported: to the SEC country by country and by project (no definition of project). It is not yet clear whether this data will be made public. | Company data to be reported:<br>• Country by country including consolidated report; and<br>• By project. | Data to be reported:<br>• Country by country in which the institution has an establishment. |
| Reporting basis for payments to government | Cash not accruals basis. Production entitlements can be reported in cash or in 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. | Taxes on profits should include 'corporate income tax', but it is not clear whether other taxes should be included, or whether this is cash tax or tax on an accounting basis (including deferred tax). |
| 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. | There is no audit requirement. | Disclosures must be audited. |

## *Defining the taxes and revenues to be covered in the EITI Report*

The Extractive Industries Transparency Initiative (EITI) contains the following rules governing the revenue streams that are in scope in s4.1 (a), (b), (d), (e) and (f):

a) In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. A description of each revenue stream, related materiality definitions and thresholds should be included in the EITI Report. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds.

b) The following revenue streams should be included:
   i. The host government's production entitlement (such as profit oil).
   ii. National state-owned enterprise production entitlement.
   iii. Profits taxes.
   iv. Royalties.
   v. Dividends.
   vi. Bonuses, such as signature, discovery and production bonuses.
   vii. Licence fees, rental fees, entry fees and other considerations for licences and/or concessions.
   viii. Any other significant payments and material benefit to government.
   ix. Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

d) Infrastructure provisions and barter arrangements:
   The multi-stakeholder group and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. To be able to do so, the multistakeholder group and the Independent Administrator need to gain a full understanding of: the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts. Where the multistakeholder group concludes that these agreements are material, the multistakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.

e) Social expenditures:
   Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, the EITI Report must disclose and, where possible, reconcile these transactions.
   i. Where such benefits are provided in-kind, it is required that the EITI Report discloses the nature and the deemed value of the in-kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed.
   ii. Where reconciliation is not feasible, the EITI Report should include unilateral company and/or government disclosures of these transactions.
   iii. Where the multi-stakeholder group agrees that discretionary social expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenue streams to government entities. Where reconciliation of key transactions is not possible, e.g. where company payments are in-kind or to a non-governmental third party, the multi-stakeholder group may wish to agree an approach for voluntary unilateral company and/or government disclosures to be included in the EITI Report.

f) Transportation:
   Where revenues from the transportation of oil, gas and minerals constitute one of the largest revenue streams in the extractive sector, the government and state-owned enterprises (SOEs) are expected to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (Requirement 5.2.e). The EITI Report could include:
   i. A description of the transportation arrangements including: the product; transportation route(s); and the relevant companies and government entities, including SOE(s), involved in transportation.

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



**Appendix C:**
EITI reporting framework

ii. Definitions of the relevant transportation taxes, tariffs or other relevant payments, and the methodologies used to calculate them.
iii. Disclosure of tariff rates and volume of the transported commodities.
iv. Disclosure of revenues received by government entities and SOE(s), in relation to transportation of oil, gas and minerals.
v. Where practicable, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling material payments and revenues associated with the transportation of oil, gas and minerals.

## *The level of disaggregation for reporting*

Section 5.2 (e) defines the level of detail that must be disclosed:

The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.



**Appendix C:**
EITI reporting framework

## *EITI implementation requirements*

1. **The EITI requires effective oversight by the multi-stakeholder group.**
The EITI requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society. The key elements of this requirement include: (1.1) government commitment; (1.2) government oversight; (1.3) the establishment of a multi-stakeholder group; and (1.4) an agreed workplan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board (1.6-1.8).

2. **The EITI requires timely publication of EITI Reports.**
EITI Reports are most useful and relevant when published regularly and contain timely data. Requirement 2 establishes deadlines for timely EITI Reporting.

3. **The EITI requires EITI Reports that include contextual information about the extractive industries.**
In order for EITI Reports to be comprehensible and useful to the public, they must be accompanied by publicly available contextual information about the extractive industries. This information should include a summary description of the legal framework and fiscal regime (3.2); together with an overview of: the extractive industries (3.3); the extractive industries' contribution to the economy (3.4); production data (3.5); state participation in the extractive industries (3.6); revenue allocations and the sustainability of revenues (3.7-3.8), license registers and license allocations (3.9-3.10); and, any applicable provisions related to beneficial ownership (3.11) and contracts (3.12).
The multi-stakeholder group should agree on who prepares the contextual information for the EITI Report (3.1).

4. **The EITI requires the production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.**
An understanding of company payments and government revenues can inform public debate about the governance of the extractive industries. The EITI requires a comprehensive reconciliation of company payments and government revenues from the extractive industries. Requirement 4 outlines the steps that the multi-stakeholder group needs to consider in order to ensure that the EITI Report provides a complete account of these payments and revenues. Section 4.1 sets out the requirements related to the types of payments and revenues to be covered in the EITI Report.

Section 4.2 specifies which companies and government entities, including state-owned enterprises, should be required to report.

5. **The EITI requires a credible assurance process applying international standards.**
Requirement 5 seeks to ensure a credible EITI reporting process so that the EITI Report contains reliable data. The EITI seeks to build on existing audit and assurance systems in government and industry and to promote adherence to international practice and standards. The multi-stakeholder group is required to appoint an Independent Administrator to reconcile the data submitted by companies and government entities (5.1). Section 5.2 outlines the issues that the multi-stakeholder group and the Independent Administrator need to consider in agreeing the terms of reference for the reconciliation. This includes the assurances that need to be provided by the reporting entities. Section 5.3 empowers the Independent Administrator to assess the comprehensiveness and reliability of the data and to make recommendations for the future. The EITI Report must be endorsed by the multi-stakeholder group (5.4).

6. **The EITI requires EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.**
Regular disclosure of natural resource revenue streams and payments from extractive companies is of little practical use without public awareness, understanding of what the figures mean, and public debate about how resource revenues can be used effectively. Requirement 6 ensures that stakeholders are engaged in dialogue about natural resource revenue management.

7. **The EITI requires that the multi-stakeholder group takes steps to act on lessons learned and review the outcomes and impact of EITI implementation.**
EITI Reports lead to the fulfilment of the EITI Principles by contributing to wider public debate. It is also vital that lessons learnt during implementation are acted upon, that discrepancies identified in EITI Reports are explained and, if necessary, addressed, and that EITI implementation is on a stable, sustainable footing.

# The EITI lists the following countries as being either candidate, compliant or suspended* countries on its website, as of 18 October 2013.

| Compliant countries | Candidate countries |
|---|---|
| Albania | Afghanistan |
| Azerbaijan | Chad |
| Burkina Faso | Guatemala |
| Cameroon | Guinea |
| Côte d'Ivoire | Honduras |
| Ghana | Indonesia |
| Iraq | Sao Tomé and Principe |
| Kazakhstan | Senegal |
| Kyrgyz Republic | Solomon Islands |
| Liberia | Tajikistan |
| Mali | The Philippines |
| Mauritania | Trinidad and Tobago |
| Mongolia | Ukraine |
| Mozambique | |
| Niger | |
| Nigeria | |
| Norway | |
| Peru | |
| Republic of Congo | |
| Tanzania | |
| Timor-Leste | |
| Togo | |
| Yemen | |
| Zambia | |

| Suspended countries* |
|---|
| Central African Republic |
| Democratic Republic of Congo |
| Madagascar |
| Sierra Leone |

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



***Appendix D:***
EITI candidate, compliant and suspended countries

## 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 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) AUTHORISATION OF APPROPRIATIONS. – There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection."



**Appendix E:**
Dodd-Frank Act: Section 1504 and final SEC rules

The following rules were adopted by the SEC on 22 August 2012, but have since been vacated by the District Court of the District of Columbia. The rules are therefore not currently in force, but are included here for reference as any revised rules issued by the SEC are expected to be broadly similar.

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 U.S. 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 program. 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 U.S. 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[14]. 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[15]. 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 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[16]. 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[17].

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.



**Appendix E:**
Dodd-Frank Act: Section 1504 and final SEC rules

**Notes:**

[14] See Exchange Act Rule 12b-2 for the definition of "control." See also note 315.

[15] 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.

[16] 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.

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

# Selected extracts from American Petroleum Institute v SEC, No 12-1668 (D.D.C 2012) Memorandum Option (2 July 2013).

The American Petroleum Institute took the SEC to Court, arguing that, amongst other things, the information required to be submitted to the SEC by the Dodd Frank Act in s 13 (q) did not need to be disclosed publicly and that there should be exemptions to s13 (q) for territories that prohibited the disclosures required by s13 (q).

The Court argued that the SEC had misread s13 (q) when considering whether to require public disclosure: *"[T]he Commission misread the statute to mandate public disclosure of the reports, and its decision to deny any exemption was, given the limited explanation provided, arbitrary and capricious." [Page 7].*

The Court reasoned that s13 (q) did not mention public disclosure: *"The Statute's plain language poses an immediate problem for the Commission, for it says nothing about the public filing of these reports. To state the obvious, the word 'public' appears nowhere in this provision. The Statute speaks of 'disclosure' and not a publicly filed report'." [Page 11].*

Whilst s13 (q) requires the public disclosure of the compilation of information, it does not require the public disclosure of all of the underlying information submitted to the SEC: *"More instructive still, the public availability requirement is narrower than the underlying disclosure. Section 13(q)(3) provides: "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 …. The public availability, then, is limited to a compilation of the information and is required only "[t]o the extent practicable". A natural reading of this provision is that, if disclosing some of the information publicly would compromise commercially sensitive information and impose high costs on shareholders and investors, then the Commission may selectively omit that information from the public compilation. The Commission points to nothing prohibiting that reading."[Page 12].*

Certain countries, such as Angola, Cameroon, China and Qatar prohibit the disclosure of payment information, and compliance with s13 (q) could result in significant costs or preclude companies from operating in these countries. Congress has given permission for the SEC to make exemptions to the disclosure requirements: *"[The] Commission "shall not adopt any… rule or regulation which would impose a burden on competition not necessary or appropriate." [Page 26].*
And the Court held that the SEC could have used this rule to exempt the four countries from s13 (q): *"The Commission could have limited the exemption to the four countries cited by the commentators or to all countries that prohibited disclosure as of a certain date." [Page 26 of the Opinion].* And the SEC could have performed more analysis: *"[G]iven the proportion of the burdens on competition and investors associated with this single decision, a fuller analysis was warranted." [Page 26].*

Therefore the Court opined that the SEC should not have denied an exemption for countries where the disclosure required by the SEC was prohibited: *"The Commission made at least one other serious error, denying, based on arbitrary and capricious reasoning, any exemption for foreign law prohibitions, a decision that, by the Commission's own assessment, drastically increased the Rule's burden on completion and cost to investors."[Page 30].*

Therefore the Court vacated the rule in its entirety and remanded the matter to the SEC for further proceedings: *"A separate order vacating the Rule and remanding to the Commission for further proceedings will be issued." [Page 30].*

**The Directive to amend the EU Transparency Directive 2004/109/EC which introduces reporting of payments to governments has been passed by the European Parliament at the first reading on 12 June 2013. It was adopted by the Council of the EU on 17 October 201 and is expected to be published in the Official Journal of the EU in late 2013.**

Per the agreed text of the new Transparency Directive; Article 6 of EU Directive 2004/109/EC 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 Article 41(1) and (2) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings*, to prepare on an annual basis, in accordance with Chapter 10 of that Directive, a report on payments made to governments. 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 ten years. Payments to governments shall be reported at consolidated level.'

**EU Directive 2013/34/EU "on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings" was published in the Official Journal of the EU on 26 June 2013.**

Chapter 10 sets out the specifics on what should be reported in terms of payments of governments and whom it should be reported.

## *Chapter 10*
**Report on payments to governments**

### Article 41
**Definitions relating to reporting on payments to governments**

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, prospection, 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 Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 (21);

2. 'undertaking active in the logging of primary forests' means an undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;

3. 'government' means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 22(1) to (6) of this Directive;

4. 'project' means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project;

5. 'payment' means an amount paid, whether in money or in kind, for activities, as described in points 1 and 2, of the following types:
   a. production entitlements;
   b. taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
   c. royalties;
   d. dividends;
   e. signature, discovery and production bonuses;
   f. licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
   g. payments for infrastructure improvement

(21 ) OJ L 393, 30.12.2006, p. 1.

### Article 42
**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 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 payments to governments drawn up by that parent undertaking in accordance with Article 44.

### Article 43
**Content of the report**

1. Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year.

* OJ L 182, 29.6.2013, p. 19.';

2. The report shall disclose the following information in relation to activities as described in points (1) and (2) of Article 41 in respect of the relevant financial year:
   a. the total amount of payments made to each government;
   b. the total amount per type of payment as specified in points (5) (a) to (g) of Article 41 made to each government;
   c. where those payments have been attributed to a specific project, the total amount per type of payment as specified in point (5)(a) to (g) of Article 41, made for each such project and the total amount of payments for each such project.

   Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

3. Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

4. The disclosure of the payments referred to in this Article shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this Directive.

5. In the case of those Member States which have not adopted the euro, the euro threshold identified in paragraph 1 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 44
**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 42 and 43 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 22(1) to (6).

   A parent undertaking is 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.

   The consolidated report shall only include payments resulting from extractive operations and/or operations relating to the logging of primary forests.

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(5), except where any affiliated undertaking is a public-interest entity;
   b. a parent undertaking of a medium-sized group, as defined in Article 3(6), except where any affiliated undertaking is a public-interest entity; and
   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 governments where at least one of the following conditions is fulfilled:
   a. severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
   b. extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Directive cannot be obtained without disproportionate expense or undue delay;
   c. the shares of that undertaking are held exclusively with a view to their subsequent resale.

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

### Article 45
**Publication**

1. The report referred to in Article 42 and the consolidated report referred to in Article 44 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. Member States shall ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is drawn up and published in accordance with the requirements of this Directive.

**Regulation (EU) No 575/2013 Article 4 (26 June 2013) defines the institutions subject to CRD IV:**

**Article 4**
**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

1. 'credit institution' means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

2. 'investment firm' means a person as defined in point (1) of Article 4(1) of Directive 2004/39/EC, which is subject to the requirements imposed by that Directive, excluding the following:
   a. credit institutions;
   b. local firms;
   c. firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;

3. "institution" means a credit institution or an investment firm;

4. 'local firm' means a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets;



*Appendix G:*
EU Capital Requirements Directive IV

**Directive 2013/36/EU Article 89 requires that information certain information should be disclosed on a country by country basis:**

**Article 89**
**Country-by-country reporting**

1. From 1 January 2015 Member States shall require each institution to disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year:
   a. name(s), nature of activities and geographical location;
   b. turnover;
   c. number of employees on a full time equivalent basis;
   d. profit or loss before tax;
   e. tax on profit or loss;
   f. public subsidies received.

2. Notwithstanding paragraph 1, Member States shall require institutions to disclose the information referred to in paragraph 1(a), (b) and (c) for the first time on 1 July 2014.

3. By 1 July 2014, all global systemically important institutions authorised within the Union, as identified internationally, shall submit to the Commission the information referred to in paragraph 1(d), (e) and (f) on a confidential basis. The Commission, after consulting EBA, EIOPA and ESMA, as appropriate, shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system. The Commission shall submit its report to the European Parliament and to the Council by 31 December 2014.

   In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may, in accordance with point (h) of Article 145, decide to defer those obligations. The Commission shall review the necessity to extend deferral annually.

4. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

5. To the extent that future Union legislative acts for disclosure obligations go beyond those laid down in this Article, this Article shall cease to apply and shall be deleted accordingly.

## *Appendix H:*
Publish What You Pay reporting proposals

The International Accounting Standards Board (IASB) included the following summary of the Publish What You Pay (PWYP) in their Discussion Paper on the extractive industries[18]:

### *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.

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

## *Appendix I:*
Overview of the Tax Justice Network's country-by-country reporting proposals for all multinational companies (MNCs)

### *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 |



*Appendix I:*
Overview of the Tax Justice Network's country-by-country reporting proposals for all multinational companies (MNCs)

### *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 EITI. |
| 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. |

**Selected extracts concerning country-by-country reporting and tax transparency taken from the *Draft opinion of the Committee on Economic and Monetary Affairs for the Committee on Legal Affairs on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups.***

The following amendments to the EU Accounting Directive 2013/34/EU were discussed at a meeting of the Economic and Monetary Affairs Committee on 17 October 2013 and are subject to further discussion and amendment as discussed in Section 7.2.

**Amendment 13**

11a. The European Council of 22 May 2013 called for the mandatory introduction of country-by-country reporting for all large companies and groups as part of the revision of Directive 2013/34/EU. Therefore, in order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities should disclose material payments made to governments in the countries in which they operate. Such disclosures should be published, where possible, as an annex to the annual financial statements or to the consolidated financial statements of the undertaking concerned.

11b. To mitigate aggressive tax planning and avoidance by Union undertakings, Member States should introduce general anti-avoidance rules (GAAR) in line with the European Commission Recommendation on Aggressive Tax Planning of 12 December 2012 and the OECD Progress Report to the G20 of 5 September 2013. Furthermore, large undertakings in the Union should also make public a report on their aggressive tax planning systems, including other relevant information.

**Amendment 31**

3b. Article 20 is amended as follows:

a. In paragraph 1, the following point is inserted:
'(ca)' In order to assess the proportionality of tax reduction methods employed by an undertaking, a description of the undertaking's tax planning arrangements should be specified which at least include:

i. aggressive tax planning arrangements including the general substance of advice received;
ii. transfer pricing arrangements and whether the transfer prices have been agreed by the revenue authorities in each of the countries concerned;
iii. permanent establishment decisions and a list of countries where the undertaking trades without having a permanent establishment;
iv. base erosion methods via interest deduction, royalties and other financial payments, including where brands are developed, where they are paid for by subsidiaries and whether they are owned by the parent company in their main operating base or if not, where domiciled for tax purposes;
v. where research and development takes place and how this is recovered from subsidiaries.'





**Amendment 39**

3d. Article 41 is amended as follows:

a. The following point is added:
5a Country-by-country report means the following financial information, to be provided by an undertaking as defined in Article 2, paragraph 1(a), (b), and (c) and Article 3, paragraph 4 for each Member State and third country in which it operates:
a. name(s), nature of activities and geographical location;
b. turnover;
c. number of employees on a full time equivalent basis;
d. profit or loss before tax;
e. tax on profit or loss;
f. public subsidies received.

**Amendment 40**

3e. Article 42 is amended as follows:

a. The title is replaced by the following:
'Undertakings required to report on payments to governments and produce a country-by-country report'
b. Paragraphs 1 and 2 are amended as follows:
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 made to governments on an annual basis. Member States shall also require large undertakings and all public-interest entities to publicly disclose annually a country-by-country report on a consolidated basis for the financial year.
2. These obligations 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 and the country-by-country report 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.'

c. The following paragraphs are added:
2a. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the company/undertaking concerned.
2b. The Commission shall conduct a general assessment report as regards potential economic consequences of the public disclosure of the country-by-country report, including the impact on competitiveness and investment and may consider making this information available to the competent tax authorities only in the case of a negative assessment. The Commission shall submit its report to the Council and the European Parliament by 31 December 2015.'

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## *Appendix K:*
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Design Services 28368 (10/13).