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Tax transparency and country by country reporting
BEPS and beyond

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Foreword

Since our last update on country by country reporting (CbCR) regimes, private disclosure of CbCR data to tax authorities has been included in the Organisation of Economic Cooperation and Development's (OECD) transfer pricing guidelines and mandatory public CbCR disclosure is a step closer for many EU companies.

Although proposals from the European Commission on public CbCR are yet to be voted on by the European Parliament and the European Council of Ministers, nevertheless public CbCR is fast becoming a reality for many companies and this is a trend that we expect to continue.

Andrew Packman
PwC UK
+44 (0) 1895 522104
andrew.packman@uk.pwc.com

CbCR is increasingly being used to look at whether companies are paying the "right" amount of tax in the "right" place rather than simply looking to highlight the amounts of tax that governments are receiving. The Extractive Industry Transparency Initiative (EITI) is the oldest regime discussed in this publication and is very much focussed on governments being held to account for the cash they receive. With the EU Accounting and Transparency Directives (EUAD) and the Dodd-Frank Act, the attention moved more towards the behaviour of companies. The inclusion of financial data in CbCR regimes, such as under the EU Capital Requirements Directive IV (CRD IV) and the OECD CbCR regime, has moved the focus firmly towards holding companies to account; the provision of financial data allows ratios to be calculated with the expectation that it can be deduced whether a business is paying tax in the "right" place and in the "right" amounts. Many people however have serious reservations as to whether it is possible to use and interpret CbCR data in this way, potentially leading to more confusion than clarity in many cases.

As companies prepare to comply with the mandatory regimes being implemented, the difficulties in interpreting the rules and collecting and understanding the data are becoming more obvious. Interpreting rules and requirements is especially challenging if they are implemented in different territories in different ways, as is the case with CRD IV. In this publication we highlight some of the common issues faced by businesses in trying to interpret the provisions of the regimes, but we do not go into the country specific details and so you should consult your local PwC contact or local country guidance where available.

Differences of interpretation can be an issue between individual companies as well as between countries. This was highlighted in the first rounds of CRD IV disclosures where there were substantial differences in the volume and the nature of the information disclosed by the various reporting institutions; some provided a great deal more contextual information than was required by the legislation, while others adhered very closely to the rules. This may in part reflect differences in emphasis and expectation in different countries as the level of interest in this area varies markedly by jurisdiction.

Looking to the future, CbCR remains high on the agendas of the European Commission and the European Parliament. In April 2016 the Commission issued a draft proposal for public CbCR for very large EU and non-EU headquartered groups. There are also reviews of the EUAD and OECD regimes in 2018 and 2020 respectively and individual countries are implementing their own CbCR regimes. CbCR therefore looks like it is here to stay. As it continues to evolve there will inevitably be issues of policy to debate and resolve, and complying with the regimes will present practical challenges for many companies for several years to come. These challenges could however be reduced if the different regimes were to be made as consistent as possible, reducing cost and confusion.

We continue to have a keen interest in how the various CbCR regimes develop, with a view to helping make sure they are workable and not more burdensome than necessary to achieve the stated policy aims. The current status of the regimes would seem to present an opportunity to develop an agreed approach with all regimes requiring the same data. We would encourage companies to continue to engage in this debate, sharing their experiences as they implement the new regimes and identifying those matters that need to be addressed to lead to better, meaningful and practical reporting for the future.

Andrew Packman

Tax Transparency and Total Tax Contribution Leader

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Introduction and overview of this publication

The country by country reporting initiatives

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

- OECD CbCR as part of transfer pricing documentation resulting from the BEPS project;
- EU Capital Requirements Directive IV (CRD IV);
- The Extractive Industries Transparency Initiative (EITI);
- EU Accounting and Transparency Directives (EUAD); and
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

The OECD Framework applies to multinational enterprises (MNEs) with a consolidated group turnover in excess of €750m. The EU Capital Requirements Directive IV applies to banks, other credit institutions and certain investment firms. The last three regimes relate to companies operating in the extractive sector, with the EU Accounting and Transparency Directives also including companies active in the logging of primary forests.

Chapters 1 to 5 each provides a **narrative introduction** to one of these five reporting frameworks, describing their origins as well as outlining their:

- Key objectives;
- Reporting requirements; and
- Current status.

In Appendices A and B we compare these five reporting frameworks. The table in Appendix A provides an **overview and comparison of the information requirements** of the **five 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 five 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 five initiatives. Chapter 6 provides a summary of a number of other tax transparency developments around the world in some selected countries including proposals from the European Commission.

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

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 31 August 2016. These initiatives will continue to evolve and users of this report should be aware that regulation in this area can develop quickly.

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1. OECD CbCR

In February 2013, at the request of the G20 group of countries, the OECD published an initial report[1] 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 concerns on an international basis.

The BEPS action plan that followed on from this initial report was issued on 19 July 2013[2] and contained 15 actions to address a range of issues including 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 details changes to be made to transfer pricing documentation requirements in order to address the challenges of BEPS and includes provisions for a CbCR template to be submitted by multinational entities (MNEs) to their tax authorities.

The requirements of the template were published by the OECD in September 2014[3] followed by implementation guidance in February 2015[4] and the implementation package in June 2015.[5] These were all consolidated into the final BEPS report that was published on 5 October 2015.[6] Further implementation guidance was published on 16 August 2016.[7]

[1] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing http://dx.doi.org/10.1787/9789264192744-en
[2] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en
[3] OECD (2014), Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. DOI: http://dx.doi.org/10.1787/9789264219236-en
[4] OECD (2015), Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.
[5] OECD (2015), Action 13: Country-by-Country Reporting Implementation Package, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.
[6] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en
[7] OECD (2016), Guidance on the Implementation of Country-by-Country Reporting - BEPS Action 13, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf

1.1 Who does it cover?

The OECD's final report states that the CbCR template is to be completed by all MNEs with a group consolidated turnover in excess of €750m per annum that operate in countries that have adopted the OECD guidance. The guidance needs to be adopted by a country in order for it to have legal effect in that country and so, except as discussed below, companies will only need to comply with the rules once the country where they are based has implemented them. The G20 member countries and the OECD member countries are all expected to implement the CbCR rules; a number of other countries, including the members of the Inter-American Center of Tax Administrations (CIAT) and the African Tax Administration Forum (ATAF) are also understood to support the rules.[8]

On 25 May 2016 the Economic and Financial Affairs Council of the European Union (ECOFIN) adopted amendments to Directive 2011/16/EU that will require all 28 EU Member States to implement CbCR in accordance with Action 13 and which will allow for exchange of CbCR information between the Member States.[9]

The OECD has stated that it would expect the CbCR data to be available by the end of 2017 in respect of financial years beginning on or after 1 January 2016.

At the time of writing, we are not aware of any country that plans to implement the reporting before the date suggested by the OECD and a number of countries are expected to implement it later.

The CbCR report is expected to be filed by the parent company of a group with its local tax authority and the report will then be shared with other tax authorities under multilateral or bilateral tax agreements, including information exchange agreements. The OECD also envisages three scenarios where a company other than the parent company would be required to file a CbCR report with its local tax jurisdiction. These are:

1. The ultimate parent entity is not required to file a CbCR report in its country of tax residence;
2. There is an agreement between the country where the ultimate parent is tax resident and the country where the subsidiary is tax resident to exchange tax information, but no agreement for automatic exchange of CbCR information; or
3. The country where the ultimate parent is tax resident has failed to provide CbCR information to the country where the subsidiary is tax resident, even though required to do so under international agreements.

[8] We understand that the OECD guidance may have the support of Albania, Bangladesh, Jamaica, Kenya, Morocco, Nigeria, Peru, the Philippines, Senegal, Tunisia, the CIAT and the ATAF. (The CIAT has the following member countries: Argentina, Aruba, Barbados, Bermuda, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Cuba, Curacao, Dominican Republic, Ecuador, El Salvador, France, Haiti, Guatemala, Guyana, Honduras, Italy, Jamaica, Mexico, Nicaragua, the Netherlands, Panama, Paraguay, Peru, Portugal, Spain, Suriname, Saint Martin, Trinidad and Tobago, the US, Uruguay, and Venezuela, with associate member countries: Czech Republic, India, Kenya and South Africa. The ATAF has the following member countries: Benin, Botswana, Burundi, Cameroon, Chad, Comoros, Cote d' Ivories, Egypt, Eritrea, Gabon, Ghana, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, The Gambia, Uganda, Zambia and Zimbabwe.)

[9] http://www.consilium.europa.eu/en/meetings/ecofin/2016/05/25/

In these cases the subsidiary in question has to prepare the CbCR data and file it with its local tax authority. Where there are several subsidiaries in a country, then the parent company may designate which subsidiary company is to make the report. Alternatively, the parent company may make the CbCR report available through a surrogate parent entity which it nominates and which is resident for tax purposes in a country that has implemented the CbCR requirements.

In addition, the OECD's August 2016 guidance provides a mechanism for surrogate parent filing. If the jurisdiction in which a parent company is tax resident implements CbCR later than the countries in which the group's subsidiaries are resident, the subsidiaries might have local filing obligations for periods prior to the first period for which the parent has to file its CbCR report. Surrogate parent filing allows a parent company to voluntarily file a CbCR report before it is required to do so, provided certain conditions are met. This allows other countries to have access to the group's CbCR report without invoking local filing rules. Japan, Switzerland and the USA have all indicated that they intend to introduce surrogate parent filing.

1.2 Key objectives

The data required by the template is intended, along with the transfer pricing master file and local files, to provide tax administrations with sufficient information to conduct transfer pricing risk assessments and examinations as an essential part of tackling the BEPS challenges.

The goal of CbCR data in particular is to provide tax administrations with useful information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide initial information to begin and target audit enquiries. The information is intended to make it easier for tax administrations to identify whether companies are operating and transacting in a way which could be viewed as artificially shifting income into tax-advantaged environments.

The CbCR data is intended to be used to assess high-level transfer pricing risks. It may also be used by tax administrations in evaluating other BEPS related risks and where appropriate for economic and statistical analysis. However, the OECD has clearly stated that the CbCR information should not be used as a substitute for a detailed transfer pricing analysis and on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. Furthermore, the OECD has stated that the CbCR information should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income.

This message is reinforced in paragraph 59 of the final report which states that

"Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the CbC Report. They will further commit that if such adjustments based on CbC Report data are made by the local tax administration of the jurisdiction, the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding. This does not imply, however, that jurisdictions would be prevented from using the CbC Report data as a basis for making further enquiries into the MNE's transfer pricing arrangements or into other tax matters in the course of a tax audit."

1.3 Latest developments

The final report from the OECD on BEPS action 13 concerning transfer pricing documentation and country-by-country reporting was released on 5 October 2015. It is now for individual countries to determine whether domestic legislation is required to implement the rules and, if so, they may adapt or adopt the model legislation provided in the final report. A number of countries including the UK, Netherlands, France and Spain have adopted the OECD's CbCR guidance in time for the first reporting to take place in 2017 in respect of fiscal years beginning on or after 1 January 2016.

Given that the CbCR documentation will be shared between tax administrations through treaty provisions, there is considerable work for many countries to do to implement or amend treaties. The final report includes model wording for competent authority agreements to facilitate the exchange of of CbCR, based on different types of conventions and agreements. On 27 January 2016, 31 countries signed the multilateral competent authority agreement allowing for the automatic exchange of CbC reports.

The OECD has developed an XML Schema and a related User Guide with a view to accommodating the electronic exchange of Country-by-Country Reports.[10] Implementation guidance was also released in August 2016.

1.4 Reporting requirements

The OECD template contains three tables. The first requires the following financial information by tax jurisdiction:

1. Tax jurisdiction
2. Revenue from related parties
3. Revenue from third parties
4. Total revenue
5. Profit before tax
6. Corporate income tax paid (including withholding tax)
7. Current year corporate income tax accrued
8. Stated capital
9. Accumulated earnings
10. Tangible fixed assets excluding cash and cash equivalents
11. Employees

[10] OECD (2016), Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers, OECD, www.oecd.org/tax/country-by-country-reporting-xml-schema-user-guide-for-taxadministrations-and-taxpayers.pdf

The second table requires details of the names of the constituent entities of a group, their country of incorporation, their country of tax residence and their main activities. The third table is for companies to provide additional relevant information including the sources of data used, average exchange rates and changes in reporting methodology from year to year. The first two tables are reproduced in Appendix C along with the OECD guidance for completing them.

The data to be provided can be taken from one of a variety of sources including consolidated group accounts, local statutory accounts, management accounts or tax accounts, though the same basis should be used every year.

The data is to be provided annually using either the fiscal year of the parent company, or the fiscal year of each of the constituent entities ended in the most recent fiscal year of the parent company.

1.5 Issues requiring clarification

The guidance produced by the OECD is high level and many MNEs, especially those with complex structures, will need to consider carefully how the rules should be applied to their particular situation.

In its August 2016 guidance, the OECD did however clarify that partnerships which are constituent entities of a group, but which are not tax resident in any jurisdiction, should be treated as stateless entities. In this case, data relating to the partnership, to the extent it cannot be attributed to a permanent establishment, should be included in the line for stateless entities. Any partners that are constituent entities within the group should include their share of the partnership's items in their jurisdiction of tax residence.

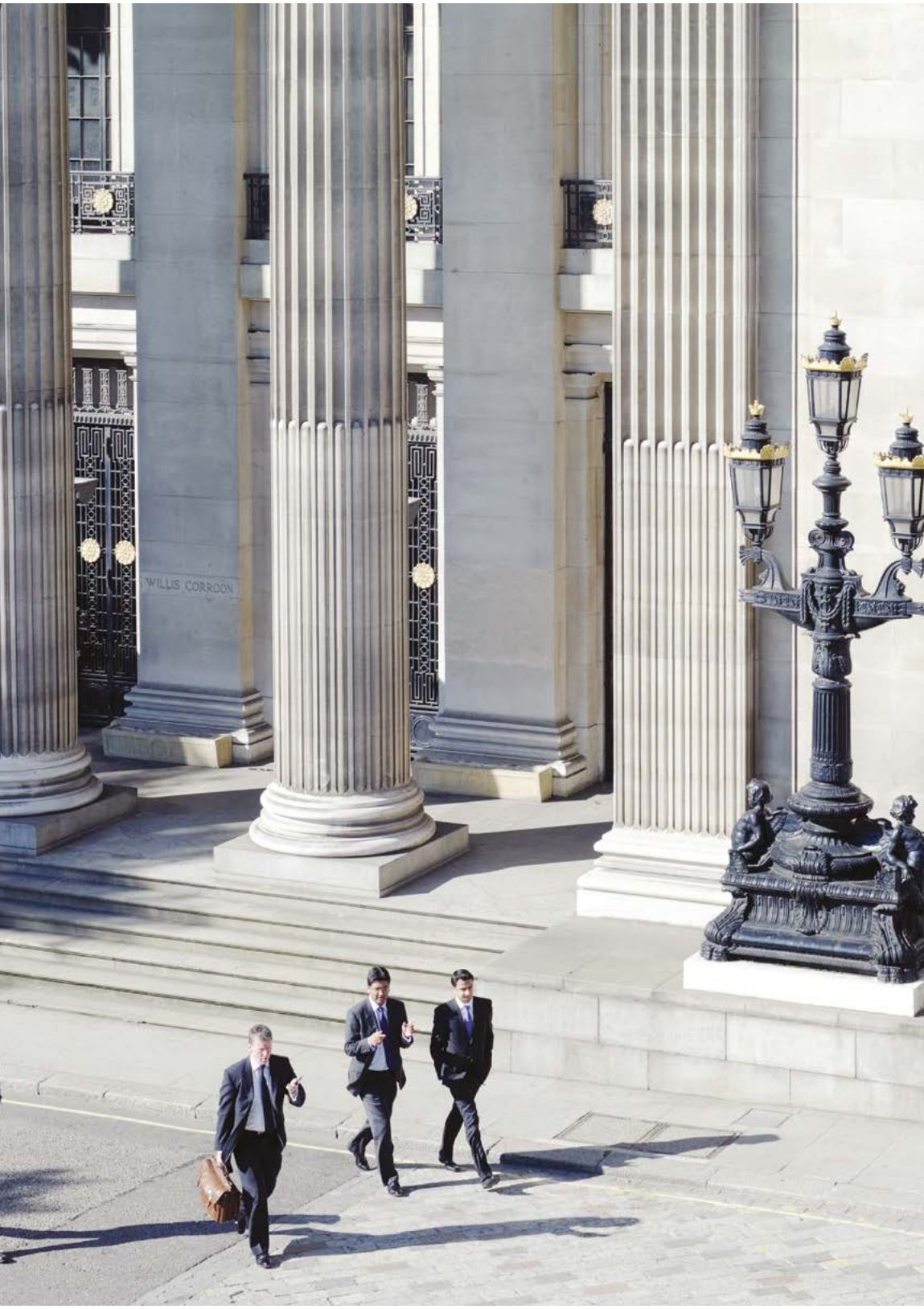
In addition, individual countries may introduce their own advice explaining how the OECD's guidance should be interpreted by companies reporting in that jurisdiction.

From our experience, companies need to pay close attention to the following questions of technical interpretation in addition to tackling the challenge of correctly identifying and collecting the data:

- Which accounting basis to use for the preparation of the CbCR template;
- Whether or not to include independent contractors within the employment numbers;
- The extent to which subsidiaries which are not wholly owned subsidiaries of the group are included;
- How to report complex structures where the allocation of income and taxing rights between countries is unclear or where different countries take different positions on the tax residence of an entity or specific income streams;
- The extent to which materiality can be used to reduce the reporting burden if there are minor items that are not recorded in financial systems in a way that facilitates reporting under the CbCR format;

- The inclusion within the revenue category of all items of income, even if, for management reporting purposes, items such as one-off intra-group transfers might be booked elsewhere in a group's income statement;
- Identifying and including withholding tax payments within tax paid as it may not be possible to readily identify these payments from standard reporting systems that focus on accruals rather than cash paid;
- Separating deferred tax, prior year adjustments and uncertain tax provisions from current year tax accruals if these amounts are not tracked separately within an accounting system;
- Which items are to be included within the balance sheet items such as tangible fixed assets and stated capital where a group's balance sheet may include a number of line items that are not to be included in the CbCR template.

While some of these issues may become clearer over time as further guidance is issued, many companies will need to exercise their own judgment and come to their own conclusions as to the most appropriate course to follow.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2. EU Capital Requirements Directive (CRD IV)

Tax transparency requirements for credit institutions and investment firms were first proposed 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 a very late stage.

It only took a little over four months from the initial proposal of these transparency requirements to their formal adoption. This meant they came into effect ahead of the EU and US requirements for the extractive industry which are discussed in the next chapter. 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 was 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.

There have been no changes to the directive since the previous version of this publication, though the interpretation of individual Member States may have developed.

2.1 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 rather more 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, though again each situation needs to be looked at on a case by case basis to determine which entities are within the scope of the article.

2.2 Key objectives

The CRD IV package was primarily developed to implement "Basel III"[11] 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.

In relation specifically to the inclusion of tax transparency measures within CRD IV, recital 52 to the directive provides the following objective:

"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."

2.3 Reporting requirements

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

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; and
f) 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 were required to report the information in (a) – (c) Article 89 by 30 June 2014. For the first year only, Globally Systemically Important Institutions (G-SIIs) had to report to the European Commission, on a confidential basis, the information in (d) – (f) Article 89, again by 30 June 2014.

The Commission undertook a review of the confidential disclosures in the first year[12] and concluded that

"At this stage, the public country by country reporting of information under Article 89 of Directive 2013/36/EU is not expected to have a significant negative economic impact, in particular on competitiveness, investment, credit availability or the stability of the financial system. On the contrary, it seems that there could be some limited positive impact; however the beneficial effects of Article 89 could be increased by addressing some elements related to the implementation of that provision. The Commission considers that, as no significant negative effects have been identified in relation to the public country by country reporting of information, the obligations under Article 89 of Directive 2013/36/EU should not be deferred and should apply, as foreseen, in full from 1 January 2015 onwards."

As a consequence of the Commission's review, all institutions that fall within Article 89 must now report the information covered by all of points a)

[11] 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.
[12] http://ec.europa.eu/internal_market/company/docs/modern/141030-cbcr-crd-report_en.pdf

to f). The information will be audited annually in accordance with EU Directive 2006/43/EC.

2.4 Issues requiring clarification

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

We list below the issues that we see as being the most important:

- **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** – there is no standard reporting format required by the Directive and different institutions have taken different approaches in preparing their disclosures. Each reporting institution may want to take account of what others are doing and of any particular requirements in their jurisdiction.
- **The form of the consolidation** – there is some question as to whether this should follow a group's accounting or regulatory consolidation, though both Germany and the UK for example have decided to follow the accounting 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 Controlled Foreign Company rules, a company pays tax in one country in respect of profits earned 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 income 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, different Member States have followed different options with the UK, for

example, requiring cash tax paid to be reported while Germany requires tax accrued under accounting principles to be reported.

- **Interpretation of the number of employees –** institutions will need to determine whether to include sub-contractors and how to treat 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. Individual countries however may include such an exemption in their domestic law.
- **Materiality –** while Article 89 requires the disclosures to be audited, there is no threshold set for reporting nor is there any guidance on audit materiality. (Section 1504 of the Dodd-Frank Act and the EU Transparency and Accounting Directives set de minimis limits for the reports that they mandate.)

Further information as to the implementation of Article 89 in the UK can be found in our publication "A practical guide to the UK regulations – country by country reporting under CRD IV".[13] The German Bundesbank has also published guidance on specific points of interpretation.[14]

2.5 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 the CRD IV requires national legislation to implement it. The transposition of the Directive into national legislation was required by 31 December 2013 though some Member States transposed the legislation after this date.

[13] http://www.pwc.co.uk/en_UK/uk/tax/assets/a-practical-guide-to-the-uk-regulations-cbcr-under-crd-iv.pdf
[14] http://www.bundesbank.de/Redaktion/DE/Downloads/Aufgaben/Bankenaufsicht/Gremien_Protokolle_Empfehlungen/fachgremium_offenlegungsanforderungen_auslegungsfragen_zur_laenderspezifischen_berichterstattung.pdf?__blob=publicationFile

3. Extractive Industries Transparency Initiative (EITI)

EITI reporting requirements are determined by individual countries via a multi-stakeholder consultation process. The EITI standard[15] provides a reporting framework that requires certain disclosures while recommending or encouraging others.

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 it. The decision by a country to implement the EITI is a voluntary one. The EITI International Secretariat oversees the global application of the standard.

3.1 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 F.

3.2 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.

3.3 Latest developments

The EITI global standard which sets out the rules for implementing countries and MSGs was substantially revised in 2013 with further revisions being included in the current version of the standard which was launched in February 2016 at the EITI Global Conference in Lima.

The first reports to be prepared under the 2013 standard have now been published and demonstrate the changes introduced by the new standard. Not only is there an increase in the contextual information supplied, but there is more information on licences and production volumes and more disaggregation of the data. In addition, the EITI has released a number of guidance notes addressing

[15] https://eiti.org/document/standard
[16] https://eiti.org/guidance-notes-and-standard-terms-reference

specific technical issues arising from the new standard.[16]

The 2016 version of the EITI standard contains the following significant changes from the 2013 version:

- The EITI requirements have been restructured (see Appendix E for the revised requirements) and are now better aligned with the extractive industry value chain. There have also been some revisions to clarify ambiguities and inconsistencies. A section on compliance and deadlines for implementing countries has also been included.

- The identity of those that own and profit from extractive activities must now be disclosed. All countries must ensure that the companies that bid for, operate or invest in extractive projects declare who their beneficial owners are. The requirement will take effect as of 1 January 2020.

- Countries are encouraged to make use of existing reporting systems for EITI data collection and to make the results transparent at source. Countries will therefore be able to disclose data through government portals, webpages and systems rather than reproduce the data in EITI reporting. This is intended to make EITI data more timely, reliable and useful, and the EITI process more cost effective and efficient. Where data is shared in this way, EITI reports will continue to play an important role in analysing and communicating the data to the wider public.

- The validation process, which assesses whether countries are complying with the EITI requirements, has been refined in the 2016 EITI Standard. The threshold for compliance has not changed, but the validation process will take greater account of the diversity across implementing countries and recognise efforts to go beyond the minimum requirements and continuously to improve implementation.

- The EITI standard includes a greater focus on ensuring that recommendations from EITI reports are considered and followed up by governments and multi-stakeholder groups.

- There is a revised protocol on the participation of civil society and a new open data policy.

3.4 Reporting requirements

The EITI establishes 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 is the responsibility of individual country MSGs and therefore there will continue to be differences between countries.

In the 2016 EITI Standard, the disclosures are mainly contained in five of the requirements as listed below. Of these, many disclosures will primarily be the responsibility of governments and local MSGs, while Requirement 4 on revenue collection will need information to be produced by companies.

- **Requirement 2: Legal and institutional framework including allocation of contracts and licenses**
  This requires an overview of the legal framework and fiscal regime in the country, a description of how licenses are allocated and transferred including information on the recipient, and countries must keep a public register of licenses. Countries are encouraged to disclose publicly any contracts and licences that provide the terms attached to the exploitation of oil, gas and minerals.

  A public register of the beneficial ownership of corporate entities that are active in the extractive industry is currently recommended, but beneficial ownership will be required to be included in EITI reports from 2020.

  State participation in the extractive sector must be disclosed including a description of rules and prevailing practice and disclosure of the level of ownership of the state in the sector.

- **Requirement 3: Exploration and production**
  Countries should disclose an overview of extractive industry, including exploration. They should also disclose production data and export data.

- **Requirement 4: Revenue collection**
  The EITI framework states that each MSG must agree which payments and revenues are material and must be disclosed. The following revenue streams are listed in the requirement (see Appendix E) and will be subject to independent reconciliation between company payments and government revenues:

i. The host government's production entitlement (such as profit oil)
ii. National state-owned company production entitlement
iii. Profits taxes
iv. Royalties
v. Dividends
vi. Bonuses, such as signature, discovery and production bonuses
vii. License fees, rental fees, entry fees and other considerations for licences and/or concessions
viii. Any other significant payments and material benefit to government

The EITI data must be presented by individual company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the Dodd-Frank and EUAD rules.

The following disclosures are also included in Requirement 4:

i. Amounts, by volume and revenues received, of the sale of the state's share of production or other revenues collected in kind;
ii. The provision of goods and services in exchange for mining or production concessions or physical delivery of commodities;
iii. Disclosure by governments and state owned enterprises of the revenues from the transportation of oil, gas and minerals where material;

- **Requirement 5: Revenue allocations**
  Disclosure is required as to how revenues from the extractive sector are included in national and subnational budgets and how they are transferred between national and subnational governments in certain circumstances. Information on the management of revenues and expenditure is encouraged.

- **Requirement 6: Social and economic spending**
  Where material social expenditures by companies are mandated by law or by the contract governing the extractive activity, the expenditure should be disclosed and, where possible, reconciled. Disclosure is encouraged for voluntary social expenditure.

State owned enterprises must disclose quasi-fiscal expenditure related to extractive activity such as public social expenditure on public infrastructure and subsidies that are outside the national budgetary process.

Information on the contribution of the extractive industries to a country's economy must be disclosed where available including the size of the industry, revenues generated, exports, employment and the location of key production.

4. EU Directives on Accounting and Transparency (EUAD)

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 entered the Official Journal of the European Union on 22 October 2013.

4.1 Who does it cover?

The new accounting directive covers EU public interest entities (notably listed entities) and large EU undertakings in the extractive industries and the logging of primary forests. 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 stand-alone basis though this should be confirmed against the domestic legislation of the relevant Member State.

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.

The requirement to prepare a consolidated report only applies where the parent company also has an obligation to prepare consolidated financial statements under Article 22 of the EU Accounting Directive.

An entity is not required to produce a report if it is a subsidiary of a parent that provides a consolidated report which 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 extends these provisions to all companies in the extractive and logging sector that are listed on recognised stock exchanges in the EU, regardless of where they are registered/incorporated. The Transparency Directive sets a reporting deadline for these companies of six months after the company's financial year-end.

4.2 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. 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 including certain state owned enterprises. It could also include certain aboriginal groups in some countries.

By requiring disclosure of payments at a project level, the EU's objective is to give local communities insight into how much 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 the government accounts for how the money is spent locally.

4.3 Reporting requirements

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

a) production entitlements;
b) taxes on income, production or profits;[17]
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;
g) 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. One of the most difficult areas for reporting companies is expected to be how they apply the definition of a project and in particular the degree of aggregation that may be used to collect different licenses together in one project.

For example, it may be possible to report at the level of a licence, contract, field, mine or other integrated operations and it will be up to each company to decide what level is the most appropriate for each of their operations.

Payments made in respect of obligations imposed at an entity level may be disclosed at an entity level rather than at a project level.

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

The question as to who is responsible for reporting a payment is likely to present particular difficulties for the oil and gas sector where it is common to have a joint venture between several parties, but with only one of the parties being designated the operator of the joint venture. On one hand, it may be appropriate for the operator to report the whole of the payments, as it is the company that actually makes the payment, while on the other hand it could be argued that the payments should be split according to each party's equity share. Each company is likely to have to form its own view on this depending on the individual circumstances and any guidance issued by the Member States.

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

The International Association of Oil and Gas Producers (IOGP) and the International Committee of Mining and Metals have been working to produce guidance as to how companies should apply the reporting requirements in the UK. Final guidance was issued by the IOGP in April 2016 and is available from their website.[18]

The disclosure requirements of the EU Accounting Directive are comparable to the US Dodd-Frank Act proposals detailed in the next section. 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 only require payments in respect of upstream activities to be reported whereas the US rules also include certain midstream activities.
- The EU rules apply to large unlisted companies, as well as listed companies, whereas the US rules are restricted to listed extractive companies only.
- The EU rules will require disclosure of payments made to US States and local governments, whereas the Dodd-Frank rules only require payments made to the US federal government to be disclosed.
- There is no exemption within the EU rules from disclosing payments made to governments in countries where such disclosure is prohibited: in the SEC rules, exemptions may be available on a case by case basis.
- When considering the aggregation of agreements to form projects, the EU rules require the consideration as to whether contracts have substantially similar terms. This requirement is not included in the US rules.

There is no prescribed EU wide format for the report though we expect that a tabular presentation is likely to be used which would be compatible with reporting in a machine readable format such as xml. For the UK, the reporting format is now available online.[19]

The report will not form part of the IFRS financial statements, 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 publication 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 EU Transparency Directive, the deadline for the reports of payments to governments is six months after the financial year end.

[18] http://www.iogp.org/Reports/Type/535/id/790
[19] https://www.gov.uk/government/publications/filingreports-for-the-extractives-industries/guidance-for-the-companies-houseextractives-service

4.4 Status

Each EU Member State was 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. In the UK the necessary legislation was passed in December 2014 with the first reporting due in 2016 in respect of financial years beginning on or after 1 January 2015.

The text of the EU Transparency Directive was published in the Official Journal of the EU on 22 October 2013. The Directive is currently being transposed into the domestic legislation of the Member States.

By mid 2018 the 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.


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5. Dodd-Frank Wall Street Reform and Consumer Protection Act

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

On 21 July 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Section 1504 of the Act added Section 13(q) to the Securities Exchange Act of 1934. Section 13(q) requires companies in the extractive industry to report all payments made to governments. Section 1504 of the Dodd-Frank Act requires the SEC to issue rules in order for the new reporting requirements to be implemented. The SEC adopted a new set of final rules on 27 June 2016.

5.1 Who does it cover?

Section 1504 of the Dodd-Frank Act includes provisions which will require SEC registered extractive industry companies[21] (upstream and vertically integrated) to report all payments made to US Federal and foreign governments. For the US, payments are required only to be reported at the Federal level, while for foreign governments, payments to all levels of government must be reported.

5.2 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..."[22]

In its commentary on the final rules of June 2016 the SEC stated that, in its view:

"Section 13(q) and the rules required thereunder are intended to advance the important US foreign policy objective of combatting global corruption and helping to promote accountability, thereby potentially improving governance in resource-rich countries around the world. The statute seeks to realize these goals by improving transparency about the payments that companies in the extractive industries make to national and subnational governments, including local governmental entities."

[20] 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 come into effect (are vacated) until the rules have been rewritten.
[21] The provisions of Dodd-Frank Act section 1504 apply to issuers with either debt or equity registrations.
[22] 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

In line with the objectives outlined by President Obama, and with its own understanding of the objectives, the SEC's final rules provide for public disclosure of the payments made to governments by each issuer.

5.3 Reporting requirements

The reporting requirements are laid out in Section 13 (q) of the Securities Exchange Act of 1934 and in the implementing rules issued by the SEC.

Section 13 (q) requires SEC registered companies in the extractive industries to file an annual SEC report publically 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 definition of control has been revised to reflect accounting concepts of control under IFRS or US GAAP. For entities or operations that are proportionally consolidated, the issuer is only required to report its proportionate share of the payment.

Payments are defined in Section 13 (q) 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."[23]

In its final rules, the SEC specified that the definition of payment should be interpreted as meaning:

- taxes on corporate profits, corporate income and production;
- royalties;
- fees (including license fees, rental fees, entry fees and other considerations for licenses or concessions);
- production entitlements;
- bonuses (including signature, discovery and production bonuses);
- dividends;
- payments for infrastructure improvements; and
- Community and social responsibility payments that are required by law or contract.

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 10-K, 20-F or 40-F 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 of the resource extraction issuer relating to the commercial development of oil, natural gas or minerals (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.);

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

- 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;
- the particular resource that is the subject of commercial development; and
- the subnational geographic location of the project.

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.

The following definition of the term "project" has now been adopted by the SEC, having been omitted from the original rule:

"Project means operational activities that are governed by a single contract, license, lease, concession, or similar agreement, which form the basis for payment liabilities with a government. Agreements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project."

The SEC has provided a non-exhaustive list of factors to consider when determining whether agreements are operationally and geographically interconnected for this purpose. Those factors are:

(a) whether the agreements relate to the same resource and the same or a contiguous part of a field, mineral district or other geographic area;
(b) whether the agreements will be performed by shared key personnel or shared equipment; and
(c) whether they are part of the same operating budget.

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 new rule will take effect for an issuer's first fiscal year ending on or after 30 September 2018. The SEC rules do not require the information on Form SD to be subject to external audit.

5.4 Exemptions

An application for exemptive relief will be considered by the SEC, for example where the issuer believes that disclosure of certain payments would be in breach of local laws.

An issuer may delay disclosing payment information related to exploratory activities until the Form SD filed for the fiscal year immediately following the fiscal year in which the payment was made.

An issuer that has acquired (or otherwise obtains control over) an entity that has not been required to provide disclosure pursuant to Rule 13q-1 or another "substantially similar" jurisdiction's requirements in such entity's last full fiscal year, is not required to start reporting payment information for such an acquired entity until the Form SD filed for the fiscal year immediately following the effective date of the acquisition.

5.5 Alternative reporting

An issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the SEC to be substantially similar to the requirements of Rule 13q-1 may satisfy its disclosure obligations by including a report complying with the reporting requirements of the alternative jurisdiction. In a separate order, the SEC determined the European and Canadian regimes to be substantially similar.

6. Other tax transparency reporting around the world

In addition to the initiatives addressed in the earlier sections of this publication, there are further provisions under consideration in the EU, and a number of other countries and bodies 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.

6.1 European Union

Corporate tax transparency, and within this broad subject CbCR, remains on the agenda of both the European Commission and the European Parliament.

The European Commission has developed a proposal[24] for a directive which, if approved by the European Parliament and Council of Ministers, will require public country-by-country reporting of tax and other financial data by large companies in the EU. The proposed directive would amend the existing EU Accounting Directive.

To be enacted, the draft directive must be approved by simple majority in the EU Parliament and then by qualified majority in Council. A qualified majority is reached if two conditions are met:

- 55% of Member States vote in favour - in practice this means 16 out of 28; and
- the proposal is supported by Member States representing at least 65% of the total EU population (but more than 35% will not block the vote unless at least one Member State also votes against).

Who would have to report?

As drafted, the proposal requires public CbCR from:

- EU-headquartered groups with consolidated turnover in excess of €750m; and
- Medium and large-sized EU subsidiaries and branches that are part of groups with non-EU headquarters and consolidated turnover in excess of €750m.

It does not apply to banks and other financial institutions reporting under Article 89 of CRD IV, provided such reporting covers all the group's activities. Companies reporting payments to governments under Chapter 10 of the EU Accounting Directive would also have to comply with the new public CbCR requirement.

[24] http://ec.europa.eu/finance/company-reporting/docs/country-by-country-reporting/160412-proposal_en.pdf

Which countries would the reporting cover?

Subject to the following rules, the reporting will cover all countries in which a group operates, regardless of whether the group has its headquarters inside or outside the EU:

- The data listed below has to be disclosed by country for EU Member States.
- The data must also be disclosed separately for each jurisdiction that is included by the European Union on a list of tax jurisdictions that do not meet certain criteria for good tax system governance.
- The data may be aggregated for all other countries.

What would be reported?

The proposal includes reporting of the following data:

1. a brief description of the nature of the activities;
2. the number of employees;
3. the amount of the net turnover, in aggregate, including the turnover with related parties;
4. the amount of profit or loss before tax;
5. the current year current income tax accrued (excluding deferred tax and uncertain tax positions);
6. the amount of income tax paid in the year; and
7. the amount of accumulated earnings.

A narrative explanation at group level should be included to reconcile differences between the amounts of tax accrued and the amounts of tax paid.

The same groups or enterprises that have to comply with public CbCR will also, in principle, file a CbCR report under OECD BEPS Action 13.

Timing and next steps

- The proposal has to be approved, potentially following amendments, by both the European Parliament and the Council of Ministers before it is entered in the Official Journal of the European Union. It would enter into force 20 days after being announced in the Official Journal.
- Member States have one year from the date of the directive's entry into force to transpose it into their domestic law.
- At the latest, the directive would apply to financial periods beginning on or after a date not later than one year after the transposition deadline.

Other points

- The disclosure would have to be filed with the relevant business register and made available on a company's website for five years.
- The impact assessment and explanatory notes that accompany the proposal suggest there should be a light touch involvement of a company's auditors, primarily to confirm that the report required by the directive has been made available and is accessible. The wording of the draft itself however requires the auditors to check if the report has been 'provided in accordance' with the directive, which could be read as requiring a more thorough audit process. The exact nature of the audit requirement is therefore unclear at this stage.

Implications for groups with non-EU headquarters

- If there is no EU holding company within a group, each medium or large EU subsidiary will be required to publish a CbCR report, resulting in multiple reports. Under Article 48b (6), however, groups can avoid this multiple reporting if a report is published on the website of the non-EU parent company.
- The draft directive appears to require each EU subsidiary to publish information relating to the whole group, information over which it may have no control. It is not clear if this is legally possible, and it is likely to be of particular significance with respect to the requirement to disclose information relating to non-EU countries that are regarded by the Commission as having poor tax governance.

Summary of differences between public CbCR and CbCR under OECD BEPS Action 13

Not all the data points that are reportable under OECD BEPS Action 13 have been included in the proposed public reporting.

The main differences between the proposed directive and the OECD regime are:

- The proposal is for public reporting – reporting under OECD rules is private to tax authorities.
- Not all elements included in OECD CbCR are included in the public version (revenues are reported in total only and the disclosure does not include tangible assets or share capital).
- The wording of the items to be disclosed differs slightly between the two regimes.
- Public reporting is by country for EU Member States and for certain countries regarded by the Commission as having inadequate tax governance, but aggregates all other countries together. Under OECD rules, data has to be reported for each and every tax jurisdiction.
- The Commission's impact assessment suggests that the intention is for companies to use their existing OECD data, but the draft legislation is not explicit on this.
- Public CbCR would include a narrative explanation at group level for differences between tax paid and current tax accrued. This is not required under OECD CbCR.

6.2 Dow-Jones Sustainability Index (DJSI)

The Dow Jones Sustainability World Index was launched in 1999 as the first global sustainability benchmark.[25] The DJSI family of indices is offered cooperatively by RobecoSAM Indices and S&P Dow Jones Indices.
The family tracks the stock performance of the world's leading companies in terms of economic, environmental and social criteria. The indices serve as benchmarks for investors who integrate sustainability considerations into their portfolios, and provide an effective engagement platform for companies who want to adopt sustainable best practices.

In 2014 the DJSI introduced the following three criteria on tax transparency into their assessment criteria:

- **Tax policy –** Assesses whether a company has a tax policy describing its approach to taxation and whether this policy is publically available.
- **Tax reporting –** Examines the company's transparency on revenues, operating profits and taxes paid on a country by country or regional basis.
- **Taxation risks –** Assesses whether a company evaluates financial and business risks associated with taxation.

6.3 Global Reporting Initiative (GRI)

GRI is an international independent organisation that helps businesses, governments and other organisations understand and communicate the impact of business on critical sustainability issues such as climate change, human rights, corruption and many others.[26] GRI has developed reporting guidelines that organisations can use to prepare sustainability reports. The fourth version of the guidelines was released in 2014 and is known as G4.

Country by country reporting appears in the G4 guidelines as follows under section G4-EC1 concerning direct economic value generated and distributed:

- [Organisations should consider reporting] payments to governments by country as part of value distributed.
- To better assess local economic impacts, [organisations should consider reporting] economic value generated and distributed separately at country, regional, or market levels, where significant.

The economic value generated and distributed would include items such as revenue, operating costs, employee wages and benefits, payments to providers of capital, payments to government and community investments.

[25] http://www.sustainability-indices.com/
[26] https://www.globalreporting.org/Pages/default.aspx

Under G4-EC4, concerning financial assistance received from government, it suggests that organisations report by country the tax reliefs and credits received alongside other assistance such as royalty holidays and government subsidies.

Companies that report in accordance with G4 are encouraged only to provide information on the issues that are really critical in order to achieve the organisation's goals for sustainability and manage its impact on the environment and society. This means that if a company reports in accordance with the G4 guidelines, it may choose not to include some or all of this data.

6.4 Australia

There have been a number of recent tax transparency developments in Australia.

The Australian Government has implemented OECD country by country reporting for income years beginning on or after 1 January 2016. A Bill containing the proposed law was introduced into Parliament in September 2015.

In August 2016, the Australian Taxation Office issued a press release announcing the publication on its website of a code on public tax transparency for large corporates. The code is to remain voluntary, but the Board recommends that the information should be made publicly available.

The code is a set of principles and 'minimum standards' to guide disclosure of tax information by businesses. Businesses with aggregated turnover between AUD 100m to 500m should, as a minimum, provide: a reconciliation of accounting profit to tax expense and to income tax paid or payable, identification of material temporary and non-temporary differences, and effective company tax rates for Australian and global operations. Larger businesses should additionally disclose their approach to tax strategy and governance, a tax contribution summary of corporate taxes paid, and information about international related party dealings.

In late 2015 the Australian Taxation Office published its first report of tax data for large Australian companies.[27] As required by legislation enacted on 29 June 2013 the Tax Office reported information about corporate tax entities with a total income of $100 million or more. The total income, taxable income and income tax payable for these entities was reported. The Tax Office also reported information about Minerals Resource Rent Tax (MRRT) and Petroleum Resource Rent Tax (PRRT) payable by an entity. These requirements apply in relation to information for the 2013-14 income year, MRRT year and year of tax (for PRRT), and to following years.[28]

[27] https://data.gov.au/dataset/corporate-transparency

[28] As the MRRT has been abolished, entities will not accrue further MRRT liabilities from 1 October 2014; therefore, the information made publicly available for future income tax years will not include MRRT information.

6.5 Canada

The Extractive Sectors Transparency Measures Act[29] requires extractive companies engaged in the commercial development of oil, gas and minerals to publically disclose their payments to governments. It applies to payments made to domestic and foreign governments at all levels, including Canadian aboriginal groups.

The act received royal assent on 16 December 2014 and came into effect on 1 June 2015. This means that companies have to report in respect of financial years beginning after 1 June 2015. The reports are due 150 days after the relevant year end.

The rules apply to companies that are listed on the Canadian stock exchange or which are otherwise subject to Canadian law and exceed two of the following three criteria:

1. CND$20 million in assets.
2. CDN$40 million in revenue.
3. An average of 250 employees.

These thresholds relate not just to the Canadian presence, but to all businesses included in the consolidated group financial statements.

The payments to be reported are similar to those reported under the EU Accounting Directive, though there are some differences. Payments over $100,000 are to be reported by project and by level of government. An exemption may be available if companies report equivalent information under a different regime, such as the EU Accounting Directive.

6.6 Denmark

In December 2013 the Danish tax authorities made public certain data on the tax position of Danish companies in respect of the 2012 tax year. This was repeated in subsequent years.

The data concerns all limited liability companies, cooperatives, funds, foundations, associations and other organisations that are liable to tax in Denmark.

The following information is disclosed:

- 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,
- 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 information is available on the Danish tax authority's website and can be searched by company name or registration number.[30]

[29] http://www.nrcan.gc.ca/acts-regulations/17754
[30] http://www.skat.dk/skat.aspx?old=skattelister

6.7 Finland

In Finland, the following items are made publically 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 and on the Finnish Tax Administration's website in Swedish and in Finnish.[31] At the beginning of November each year the corporate income tax information for the previous tax year is made public. The information available at that time (when the regular tax assessment closes) is disclosed. If there are any changes or corrections for taxable income after this date, no update is made.

6.8 Norway

Norway has adopted the requirement of Chapter 10 of the EU Accounting Directive into its reporting regime which also requires the disclosure of information on investments, sales revenue, production volume, purchase of goods and services, number of employees and the names of subsidiaries.[32] It applies for financial years beginning on or after 1 January 2014 and the first reports appeared in 2015.

In addition, in Norway 'tax lists' are made available to the public through the Tax Directorate's home page.[33] 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
- 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.

[31] http://www.tax.fi/fi-FI
[32] Norwegian Accounting Act ('Regnskapsloven')§ 3-3d, §3-5 and §8-2 , the Norwegian Securities Act ('Verdipapirhandelloven') § 5-5a, §5-12 and §5-13 and accompanying regulations ('Forskrift om land-for-land rapportering')
[33] www.skatteetaten.no

6.9 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 CIT, 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.
- 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.

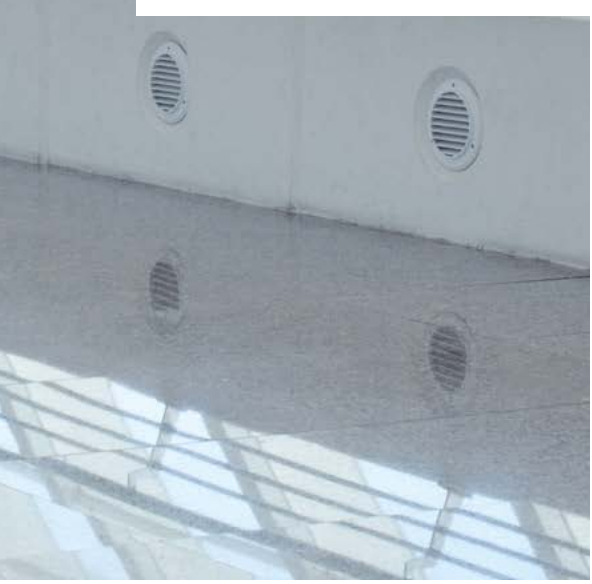
6.10 United Kingdom

On 5 September 2016 the UK Government agreed to accept an amendment to Finance Bill 2016, which has since been enacted, potentially to include a country- by-country report, prepared in line with the OECD BEPS Action 13 requirements, as part of the published tax strategies of large businesses.

The amendment gives the UK Treasury the power to make regulations requiring the CbCR to be made public, but we understand that the regulations would only be made when and if there is further international consensus on public CbCR.

If such consensus were to be reached and regulations implemented, they would apply to businesses required to disclose their UK tax strategy i.e. broadly groups that fall either within the senior accounting officer regime or where the ultimate group parent of a UK entity is subject to OECD BEPS CbCR (or it would be if it was UK tax resident).

Appendices



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

		EITI*	Dodd-Frank	EU AD**	CRD IV**	OECD BEPS
		Extractives	Extractives	Extractives and logging	Banks and FS	MNCs
Public disclosure?		✓	✓	✓	✓	x
Names of establishments, nature of activities and geographical location		x	x	x	✓	✓
Payments to government	Production entitlement	✓	✓	✓	x	x
	Profit taxes e.g. corporate income tax paid	✓	✓	✓	✓**	✓
	Current corporate income tax accrued	x	x	x	✓**	✓
	Other taxes on income, profit or production e.g. petroleum revenue tax	✓	✓	✓	x	x
	Royalties	✓	✓	✓	x	x
	Dividends	✓	✓	✓	x	x
	Production, signatory, discovery and other bonuses	✓	✓	✓	x	x
	Licence fees, rental fees, entry fees, other licence/ concession fees	✓	✓	✓	x	x
	Infrastructure payments	✓	✓	✓	x	x
	Social expenditure	✓	✓†	✓††	x	x
	Public subsidies received	x	x	x	✓	x
Revenues – Total		x	x	x	✓	✓
Revenues – Third parties		x	x	x	x	✓
Revenues – Related parties		x	x	x	x	✓
Number of employees		x	x	x	✓	✓
Profit or loss before tax		x	x	x	✓	✓
Stated capital		x	x	x	x	✓
Accumulated earnings		x	x	x	x	✓
Tangible assets other than cash and cash equivalents		x	x	x	x	✓

* Items to be reported under EITI are given in line with the international standard. Local country implementation may require more and/or different items to be disclosed

** Items to be reported under CRD IV and the EU Accounting Directive are based on the EU Directives. As Member States have to transpose the Directives into domestic law there may be differences in disclosures between Member States following transposition

† Covers social expenditure payments that are required by law or contract

†† Covers social expenditure payments that are made as consideration for licences or in lieu of bonus payments

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

Initiative name	CbCR under OECD	EITI Framework
Who needs to report?	Multinational groups with a turnover in excess of €750m operating in OECD member countries and other countries that adopt the OECD guidance.	Extractives industry companies involved in exploration and production, i.e. upstream activities in countries which have adopted the EITI.
For which activities do they need to report?	All activities.	All extractive activities in the relevant country.
Payments to which levels of government?	As only corporate income taxes are to be reported, this will mainly be payments to national governments, though could include local and state governments in some countries.	Country EITI Programs decide whether payments to sub national levels of government are material and, if so, how to include them.
Materiality.	Entities excluded from financial statements only on size or materiality grounds should be included in the CbCR data. No guidance is given as to the materiality thresholds for the data to be included.	All material revenue streams must be reported. EITI countries are free to establish a materiality level for disclosure which may relate to size of payments or size of companies.
Reporting timeframe.	One year after the end of the relevant financial year.	EITI Country Programs decide on the timetable for reporting. Annual reports are standard.

Dodd-Frank	EU Accounting Directive	CRD IV
SEC issuers (including foreign issuers)that engage in the commercial development of oil, natural gas or minerals and that file reports on forms 10-K, 20-F or 40-F.	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.
Exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity.	Only for payments arising from extractive activity.	Activities conducted by the regulated institution and its subsidiaries.
Payments to sub national levels of foreign government are included; but payments to sub national levels of government in the United States are excluded.	Payment to each government within a financial year (including type of payment) Payments 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).
De-mimimis cut off for any payment, whether made as a single payment or a series of related payments, which is below $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.
Information to be provided for the fiscal year covered by the applicable SEC filings. The first reporting period for each issuer will be its first fiscal year ending on or after 30 September 2018. The reports are due 150 days after the relevant year end.	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.

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

Initiative name	CbCR under OECD	EITI Framework
Where the data needs to be reported.	To be reported to the tax authority in the parent company jurisdiction and shared with other tax authorities through information exchange agreements.	There is no public disclosure by the company itself. 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.
Level of data aggregation.	Financial and tax data is to be reported by tax jurisdiction. In addition, for each entity its place of tax residence, place of legal incorporation and main activities must be provided.	Data to be reported at an individual company and individual project level.
Reporting basis for payments to government.	Tax is reported on both a cash and current year accrual basis.	Cash not accruals basis. Production entitlements can be reported in cash or kind.
Audit requirements.	There are no audit requirements.	Where companies are audited to international standards, there is generally no further audit requirement. Amounts paid by companies are reconciled to the amounts received by government.

Dodd-Frank	EU Accounting Directive	CRD IV
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.
Data to be reported to the SEC by project and by government. Each issuer's data will be publicly available.	Data to be reported by country by payment type: • By level of government • By project.	Data to be reported by each country in which the institution has an establishment.
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).
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.

Appendix C:
OECD CbCR Guidance

The following extracts are taken from the OECD's Transfer Pricing and Country-by-Country Reporting, Action 13- 2015 Final Report, October 2015.[33]

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group:
Fiscal year concerned:

Tax Jurisdiction	Revenues			Profit/(loss) before income tax
	Unrelated Party	Related Party	Total	

Table 2. List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group:
Fiscal year concerned:

Tax Jurisdiction	Constituent entities resident in the tax jurisdiction	Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence	Main business activities				
			Research and development	Holding or managing intellectual property	Purchasing or procurement	Manufacturing or production	Sales, marketing or distribution

[33] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241480-en

Income tax paid (on cash basis)	Income tax accrued – current year	Stated Capital	Accumulated earnings	Number of employees	Tangible assets excluding cash and cash equivalents

Administrative, management or support services	Provision of services to unrelated parties	Internal group finance	Regulated financial services	Insurance	Holding shares or other equity instruments	Dormant	Other

Appendix C:
OECD CbCR Guidance

The following definitions and guidance are taken from the OECD publication "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report".

Definitions

Reporting MNE

A Reporting MNE is the ultimate parent entity of an MNE group.

Constituent Entity

For purposes of completing Annex III, a Constituent Entity of the MNE group is (i) any separate business unit of an MNE group that is included in the Consolidated Financial Statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; (ii) any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and (iii) any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

Treatment of Branches and Permanent Establishments

The permanent establishment data should be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part should exclude financial data related to the permanent establishment.

Consolidated Financial Statements

The Consolidated Financial Statements are the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the Constituent Entities are presented as those of a single economic entity.

Period covered by the annual template

The template should cover the fiscal year of the Reporting MNE. For Constituent Entities, at the discretion of the Reporting MNE, the template should reflect on a consistent basis either (i) information for the fiscal year of the relevant Constituent Entities ending on the same date as the fiscal year of the Reporting MNE, or ending within the 12 month period preceding such date, or (ii) information for all the relevant Constituent Entities reported for the fiscal year of the Reporting MNE.

Source of data

The Reporting MNE should consistently use the same sources of data from year to year in completing the template.

The Reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements. If statutory financial statements are used as the basis for reporting, all amounts should be translated to the stated functional currency of the Reporting MNE at the average exchange rate for the year stated in the Additional Information section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The Reporting MNE should provide a brief description of the sources of data used in preparing the template in the Additional Information section of the template. If a change is made in the source of data used from year to year, the Reporting MNE should explain the reasons for the change and its consequences in the Additional Information section of the template.

Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)

Tax Jurisdiction

In the first column of the template, the Reporting MNE should list all of the tax jurisdictions in which Constituent Entities of the MNE group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line should be included for all Constituent Entities in the MNE group deemed by the Reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker should be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity should be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management should be determined in accordance with the provisions of Article 4 of the OECD Model Tax Convention and its accompanying Commentary.

Revenues

In the three columns of the template under the heading Revenues, the reporting MNE should report the following information: (i) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with associated enterprises; (ii) the sum of revenues of all the Constituent Entities of the MNE group in the relevant tax jurisdiction generated from transactions with independent parties; and (iii) the total of (i) and (ii). Revenues should include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues should exclude payments received from other Constituent Entities that are treated as dividends in the payor's tax jurisdiction.

Profit (Loss) Before Income Tax

In the fifth column of the template, the Reporting MNE should report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax should include all extraordinary income and expense items.

Income Tax Paid (on Cash Basis)

In the sixth column of the template, the Reporting MNE should report the total amount of income tax actually paid during the relevant fiscal year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid should include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid should include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B should be reported by company A.

Income Tax Accrued (Current year)

In the seventh column of the template, the Reporting MNE should report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax expense should reflect only operations in the current year and should not include deferred taxes or provisions for uncertain tax liabilities.

Stated capital

In the eighth column of the template, the Reporting MNE should report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital should be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

Accumulated earnings

In the ninth column of the template, the Reporting MNE should report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings should be reported by the legal entity of which it is a permanent establishment.

Number of Employees

In the tenth column of the template, the Reporting MNE should report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently

applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

Tangible Assets other than Cash and Cash Equivalents

In the eleventh column of the template, the Reporting MNE should report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets should be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction (Table 2)

Constituent Entities resident in the Tax Jurisdiction

The Reporting MNE should list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE group which are resident for tax purposes in the relevant tax jurisdiction. As stated above with regard to permanent establishments, however, the permanent establishment should be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment should be noted (e.g. XYZ Corp – Tax Jurisdiction A PE).

Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence

The Reporting MNE should report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE is organised or incorporated if it is different from the tax jurisdiction of residence.

Main business activity(ies)

The Reporting MNE should determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

Appendix D:
EU Capital Requirements Directive IV

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

Article 4
Definitions

1. 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;

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.

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 E:
EITI Standard

The following requirements are taken from the EITI Standard 2016. For most of the requirements, only the overview is included below. Detailed extracts have however been included where they contain significant information on the data that companies are required to disclose.

Requirement 1:
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 requirements related to multi-stakeholder oversight include: (1.1) government engagement; (1.2) industry engagement; (1.3) civil society engagement; (1.4) the establishment and functioning of a multi-stakeholder group; and (1.5) an agreed work plan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board.

Requirement 2:
Legal and institutional framework, including allocation of contracts and licenses.

The EITI requires disclosures of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the State in managing the sector. The EITI Requirements related to a transparent legal framework and award of extractive industry rights include: (2.1) legal framework and fiscal regime; (2.1) license allocations (2.3) register of licenses; (2.4) contracts; (2.5) beneficial ownership; and (2.6) state-participation in the extractive sector.

2.5 Beneficial ownership

c) As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI Report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information. Where a country is facing constitutional or significant practical barriers to the implementation of this requirement by 1 January 2020, the country may seek adapted implementation in accordance with requirement 8.1.

d) Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.

Requirement 3:
Exploration and production.
The EITI requires disclosures of information related to exploration and production, enabling stakeholders to understand the potential of the sector. The EITI Requirements related to a transparency in exploration and production activities include: (3.1) information about exploration activities; (3.2) production data; and (3.3) export data.

Requirement 4:
Revenue collection.
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. The EITI Requirements related to revenue collection include: (4.1) comprehensive disclosure of taxes and revenues; (4.2) sale of the state's share of production or other revenues collected in kind; (4.3) Infrastructure provisions and barter arrangements; (4.4) transportation revenues; (4.5) SOE transactions; (4.6) subnational payments; (4.7) level of disaggregation; (4.8) data timeliness; and (4.9) data quality.

4.1 Comprehensive disclosure of taxes and revenues.

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 disclosed. 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 company production entitlement
   iii. Profits taxes
   iv. Royalties

v. Dividends
vi. Bonuses, such as signature, discovery and production bonuses
vii. License fees, rental fees, entry fees and other considerations for licences and/or concessions
viii. Any other significant payments and material benefit to government

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.

4.3 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 multi-stakeholder 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 multi-stakeholder group concludes that these agreements are material, the multi-stakeholder 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.

4.7 Level of disaggregation.
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.

Requirement 5:
Revenue allocations
The EITI requires disclosures of information related to revenue allocations, enabling stakeholders to understand how revenues are recorded in the national and where applicable, subnational budgets.

The EITI Requirements related to revenue allocations include: (5.1) distribution of revenues; (5.2) subnational transfers; and (5.3) revenue management and expenditures.

Requirement 6:
Social and economic spending.
The EITI requires disclosures of information related to social expenditures and the impact of the extractive sector on the economy, helping stakeholders to assess whether the extractive sector is leading to the desirable social and economic impacts and outcomes. The EITI Requirements related to social and economic spending include: (6.1) social expenditures by companies; (6.2) SOE quasi-fiscal expenditures; and (6.3) an overview of the contribution of the extractive sector to the economy.

6.1 Social expenditures by extractive companies.
a) Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, implementing countries must disclose and, where possible, reconcile these transactions. Where such benefits are provided in kind, it is required that implementing countries disclose 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. Where reconciliation is not feasible, countries should provide unilateral company and/or government disclosures of these transactions.

b) 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.

Requirement 7:
Outcomes and impact.
Regular disclosure of extractive industry data 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. The EITI Requirements related to outcomes and impact seek to ensure that stakeholders are engaged in dialogue about natural resource revenue management. 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.

Requirement 8:
Compliance and deadlines for implementing countries.
This section outlines the timeframes established by the EITI Board for publication of EITI Reports (8.2), annual progress reports (8.4) and Validation (8.3). It outlines the consequences of non-compliance with the deadlines and the requirements for EITI implementation. It also explains the possibility and criteria for countries to apply for adapted implementation (8.1) and extensions (8.5).

Appendix E

Appendix F:
EITI candidate, compliant and suspended countries

The EITI lists the following countries as being either candidate, compliant or suspended countries on its website, as of 31 August 2016.

Compliant countries	Candidate countries
Albania	Afghanistan
Burkina Faso	Azerbaijan
Cameroon	Colombia
Chad	Dominican Republic
Côte d'Ivoire	Ethiopia
Democratic Republic of Congo	Germany
Ghana	Honduras
Guatemala	Madagascar
Guinea	Malawi
Indonesia	Myanmar
Iraq	Papua New Guinea
Kazakhstan	Philippines
Kyrgyz Republic	Sao Tomé and Principe
Liberia	Senegal
Mali	Seychelles
Mauritania	Solomon Islands
Mongolia	Tajikistan
Mozambique	Ukraine
Niger	United Kingdom
Nigeria	USA
Norway	
Peru	
Republic of the Congo	
Sierra Leone	
Tanzania	
Timor-Leste	
Togo	
Trinidad and Tobago	
Zambia	

Appendix F:
EITI candidate, compliant and suspended countries

Suspended countries*

Central African Republic
Yemen

*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 G:
EU Accounting and Transparency Directive requirements

EU Directive 2013/50/EU amending the EU Transparency Directive 2004/109/EC which introduces reporting of payments to governments was published in the Official Journal of the EU on 6 November 2013.

The following new Article 6 was introduced in the Transparency Directive by this amendment:

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, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (*), 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 10 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 to governments and to 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,

*OJ L 182, 29.6.2013, p. 19.'
*OJ L 393, 30.12.2006, p. 1.

3. Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests;

4. '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;

5. '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;

6. '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

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.

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).

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.

Appendix H:
Dodd-Frank Act: Section 1504 and draft SEC rules

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

SEC1504.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 H:
Dodd-Frank Act: Section 1504 and draft SEC rules

The following is an extract from the final rules that were adopted by the SEC on 27 June 2016:

Disclosure of payments made by resource extraction issuers.

(a) A resource extraction issuer must file a report on **Form SD** within the period specified in that Form disclosing the information required by the applicable items of Form SD as specified in that Form.

(b) **Anti-evasion**. Disclosure is required under this section in circumstances in which an activity related to the commercial development of oil, natural gas, or minerals, or a payment or series of payments made by a resource extraction issuer to a foreign government or the Federal Government for the purpose of commercial development of oil, natural gas, or minerals is not, in form or characterization, within one of the categories of activities or payments specified in Form SD, but is part of a plan or scheme to evade the disclosure required under this section.

(c) **Alternative Reporting**. An application for recognition of a regime as substantially similar for purposes of alternative reporting must be filed in accordance with the procedures set forth in Rule 0-13 (§240.0-13 of this chapter), except that, for purposes of this paragraph (c), applications may be submitted by resource extraction issuers, governments, industry groups, or trade associations.

(d) **Exemptive Relief**. An application for exemptive relief under this section 240.13q-1 may be filed in accordance with the procedures set forth in Rule 0-12 (§240.0-12 of this chapter).

(e) **Public Compilation**. To the extent practicable, the staff will periodically make a compilation of the information required to be filed under this section publicly available online. The staff may determine the form, manner and timing of the compilation, except that no information included therein may be anonymized (whether by redacting the names of the resource extraction issuer or otherwise).

INFORMATION TO BE INCLUDED IN THE REPORT

Section 2 – Resource Extraction Issuer Disclosure

Item 2.01 Resource Extraction Issuer Disclosure and Report

(a) **Required Disclosure**.
A resource extraction issuer must file an annual report on Form SD with the Commission, and include as an exhibit to this Form SD, information relating to any payment made during the fiscal year covered by the annual report 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.

The resource extraction issuer is not required to have the information audited.

The payment information must be provided on a cash basis.

The resource extraction issuer must provide a statement in the body of the Form SD that the specified payment disclosure required by this Form is included in such exhibit.

The resource extraction issuer must include the following information in the exhibit, which must present the information in the eXtensible Business Reporting Language (XBRL) electronic format:

1. The type and total amount of such payments, by payment type listed in paragraph (d)(8)(iii) of this Item, made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;
2. The type and total amount of such payments, by payment type listed in paragraph (d)(8)(iii) of this Item, for all projects made to each government;
3. The total amounts of the payments, by payment type listed in paragraph (d)(8)(iii) of this Item;
4. The currency used to make the payments;
5. The fiscal year in which the payments were made;
6. The business segment of the resource extraction issuer that made the payments;
7. The governments (including any foreign government or the Federal Government) that received the payments and the country in which each such government is located;
8. The project of the resource extraction issuer to which the payments relate;
9. The particular resource that is the subject of commercial development; and
10. The subnational geographic location of the project.

(b) **Delayed Reporting.**

1. A resource extraction issuer may delay disclosing payment information related to exploratory activities until the Form SD filed for the fiscal year immediately following the fiscal year in which the payment was made. For purposes of this paragraph, payment information related to exploratory activities includes all payments made as part of the process of:
   i. identifying areas that may warrant examination,
   ii. examining specific areas that are considered to have prospects of containing oil and gas reserves, or
   iii. as part of a mineral exploration program, in each case limited to exploratory activities that were commenced prior to any development or extraction activities on the property,

any adjacent property, or any property that is part of the same project.

2. A resource extraction issuer that has acquired (or otherwise obtains control over) an entity that has not been obligated to provide disclosure pursuant to Rule 13q-1 or another "substantially similar" jurisdiction's requirements in such entity's last full fiscal year is not required to commence reporting payment information for such acquired entity until the Form SD filed for the fiscal year immediately following the effective date of the acquisition. A resource extraction issuer must disclose that it is relying on this accommodation in the body of its Form SD filing.

(c) **Alternative Reporting.**

1. A resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of Rule 13q-1 (17 CFR 240.13q-1) may satisfy its disclosure obligations under paragraph (a) of this Item 2.01 by including, as an exhibit to this Form SD, a report complying with the reporting requirements of the alternative jurisdiction.
2. The alternative report must be the same as the one prepared and made publicly available pursuant to the requirements of the approved alternative reporting regime, subject to changes necessary to comply with any conditions to alternative reporting set forth by the Commission.
3. The resource extraction issuer must: (i) state in the body of the Form SD that it is relying on the alternative reporting provision; (ii) identify the alternative reporting regime for which the report was prepared; (iii) describe how to access the publicly filed report in the alternative jurisdiction; and (iv) specify that the payment disclosure required by this Form is included in an exhibit to this Form SD.
4. The alternative report must be provided in XBRL format.
5. A fair and accurate English translation of the entire report must be filed if the report is in a foreign language. Project names may be presented in their original language, in addition to the English translation of the project name, if the resource extraction issuer believes that such an approach would facilitate identification of the project by users of the disclosure.
6. Unless the Commission provides otherwise in an exemptive order, a resource extraction issuer may follow the submission deadline of an approved alternative jurisdiction if it files a notice on Form SD-N on or before the due date of its Form SD indicating its intent to file the alternative report using the alternative jurisdiction's deadline. If a resource extraction issuer fails to file such notice on a timely basis, or files such a notice but fails to file the alternative report within two business days of the alternative

jurisdiction's deadline, it may not rely on this Item 2.01(c) for the following fiscal year.

7. Resource extraction issuers must also comply with any additional requirements that are provided by the Commission upon granting an alternative reporting accommodation, as well as subsequent changes in such requirements.

(d) **Definitions.**

For purposes of this item, the following definitions apply:

1. *Business segment* means a business segment consistent with the reportable segments used by the resource extraction issuer for purposes of financial reporting.
2. *Commercial development of oil, natural gas, or minerals* means exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity.
3. *Control* means that the resource extraction issuer consolidates the entity or proportionately consolidates an interest in an entity or operation under the accounting principles applicable to the financial statements included in the resource extraction issuer's periodic reports filed pursuant to the Exchange Act (i.e., under generally accepted accounting principles in the United States (U.S. GAAP) or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS), but not both). A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP or IFRS, and files with the Commission a reconciliation to U.S. GAAP must determine control using U.S. GAAP.
4. *Export* means the movement of a resource across an international border from the host country to another country by a company with an ownership interest in the resource. Export does not include the movement of a resource across an international border by a company that (i) is not engaged in the exploration, extraction, or processing of oil, natural gas, or minerals and (ii) acquired its ownership interest in the resource directly or indirectly from a foreign government or the Federal Government. Export also does not include cross-border transportation activities by an entity that is functioning solely as a service provider, with no ownership interest in the resource being transported.
5. *Extraction* means the production of oil and natural gas as well as the extraction of minerals.
6. *Foreign government* means a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. As used in this Item 2.01, 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.

7. *Not de minimis* means any payment, whether made as a single payment or a series of related payments, which equals or exceeds $100,000, or its equivalent in the resource extraction issuer's reporting currency, during the fiscal year covered by this Form SD. In the case of any arrangement providing for periodic payments or installments, a resource extraction issuer must use the aggregate amount of the related periodic payments or installments of the related payments in determining whether the payment threshold has been met for that series of payments, and accordingly, whether disclosure is required.
8. *Payment* means an amount paid that:
   i. Is made to further the commercial development of oil, natural gas, or minerals;
   ii. Is not de minimis; and
   iii. Is one or more of the following:
   a. Taxes;
   b. Royalties;
   c. Fees;
   d. Production entitlements;
   e. Bonuses;
   f. Dividends;
   g. Payments for infrastructure improvements; and
   h. Community and social responsibility payments that are required by law or contract.
9. *Project* means operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government. Agreements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project.
10. *Resource extraction* issuer means an issuer that:
    i. Is required to file an annual report with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)); and
    i. Engages in the commercial development of oil, natural gas, or minerals.
11. *Subsidiary* means an entity controlled directly or indirectly through one or more intermediaries.

Instructions to Item 2.01

Disclosure by Subsidiaries and other Controlled Entities

1. If a resource extraction issuer is controlled by another resource extraction issuer that has filed a Form SD disclosing the information required by Item 2.01 for the controlled entity, then such controlled entity is not required to file the disclosure required by Item 2.01 separately. In such circumstances, the controlled entity must file a notice on Form SD indicating that the required disclosure was filed on Form SD by the controlling entity, identifying the controlling entity and the date it filed the disclosure. The reporting controlling entity must note that it is filing the required disclosure for a controlled entity and must identify

the controlled entity on its Form SD filing.

Currency Disclosure and Conversion

2. A resource extraction issuer must report the amount of payments made for each payment type, and the total amount of payments made for each project and to each government, during the reporting period in either U.S. dollars or the resource extraction issuer's reporting currency. If a resource extraction issuer has made payments in currencies other than U.S. dollars or its reporting currency, it may choose to calculate the currency conversion between the currency in which the payment was made and U.S. dollars or the resource extraction issuer's reporting currency, as applicable, in one of three ways:
   a. by translating the expenses at the exchange rate existing at the time the payment is made;
   b. using a weighted average of the exchange rates during the period; or
   c. based on the exchange rate as of the resource extraction issuer's fiscal year end.

When calculating whether the de minimis threshold has been exceeded, a resource extraction issuer may be required to convert the payment to U.S. dollars, even though it is not required to disclose those payments in U.S. dollars. For example, this may occur when the resource extraction issuer is using a non-U.S. dollar reporting currency. In these instances, the resource extraction issuer may use any of the three methods described above for calculating the currency conversion. In all cases a resource extraction issuer must disclose the method used to calculate the currency conversion and must choose a consistent method for all such currency conversions within a particular Form SD filing.

Geographic Location Tagging

3. When identifying the country in which a government is located, a resource extraction issuer must use the code provided in ISO 3166 if available. When identifying the "subnational geographic location of the project," as used in Item 2.01(a)(10), a resource extraction issuer must include the subdivision code provided in ISO 3166 if available and must also include sufficiently detailed additional information to permit a reasonable user of the information to identify the project's specific, subnational, geographic location. In identifying the project's specific location, resource extraction issuers may use subnational jurisdiction(s) (e.g., a state, province, county, district, municipality, territory, etc.) and/or a commonly recognized, subnational, geographic or geological description (e.g., oil field, basin, canyon, delta, desert, mountain, etc.). More than one descriptive term may be necessary when there are multiple projects in close proximity to each other or when a project does not reasonably fit within a commonly recognized,

subnational geographic location. In considering the appropriate level of detail, resource extraction issuers may need to consider how the relevant contract identifies the location of the project.

Entity Level Disclosure and Tagging

4. If a government levies a payment obligation, such as a tax or a requirement to pay a dividend, at the entity level rather than on a particular project, a resource extraction issuer may disclose that payment at the entity level. To the extent that payments, such as corporate income taxes and dividends, are made for obligations levied at the entity level, a resource extraction issuer may omit certain tags that may be inapplicable (e.g., project tag, business segment tag) for those payment types as long as it provides all other electronic tags, including the tag identifying the recipient government.

Payment Disclosure

5. When a resource extraction issuer proportionately consolidates an entity or operation under U.S. GAAP or IFRS, as applicable, the resource extraction issuer must disclose its proportionate amount of the payments made by such entity or operation pursuant to this Item and must indicate the proportionate interest.
6. Although an entity providing only services to a resource extraction issuer to assist with exploration, extraction, processing or export would generally not be considered a resource extraction issuer, where such a service provider makes a payment that falls within the definition of "payment" to a government on behalf of a resource extraction issuer, the resource extraction issuer must disclose such payment.
7. *"Processing,"* as used in Item 2.01, would include, but is not limited to, midstream activities such as the processing of gas to remove liquid hydrocarbons, the removal of impurities from natural gas prior to its transport through a pipeline, and the upgrading of bitumen and heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal. It would also include the crushing and processing of raw ore prior to the smelting phase. It would not include the downstream activities of refining or smelting.
8. A resource extraction issuer must disclose payments made for taxes on corporate profits, corporate income, and production. Disclosure of payments made for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes, is not required.
9. *Royalties* include unit-based, value-based, and profit-based royalties. Fees include license fees, rental fees, entry fees, and other considerations for licenses or concessions. Bonuses

include signature, discovery, and production bonuses.

10. *Dividends* paid to a government as a common or ordinary shareholder of the resource extraction issuer that are paid to the government under the same terms as other shareholders need not be disclosed. The resource extraction issuer, however, must disclose any dividends paid in lieu of production entitlements or royalties.
11. If a resource extraction issuer makes an *in-kind payment* of the types of payments required to be disclosed, the resource extraction issuer must disclose the payment.

When reporting an in-kind payment, a resource extraction issuer must determine the monetary value of the in-kind payment and tag the information as "in-kind" for purposes of the currency. For purposes of the disclosure, a resource extraction issuer must report the payment at cost, or if cost is not determinable, fair market value and must provide a brief description of how the monetary value was calculated. If a resource extraction issuer makes an in-kind production entitlement payment under the rules and then repurchases the resources associated with the production entitlement within the same fiscal year, the resource extraction issuer must report the payment using the purchase price (rather than at cost, or if cost is not determinable, fair market value). If the in-kind production entitlement payment and the subsequent repurchase are made in different fiscal years and the purchase price is greater than the previously reported value of the in-kind payment, the resource extraction issuer must report the difference in values in the latter fiscal year (assuming the amount of that difference exceeds the de minimis threshold).

In other situations, such as when the purchase price in a subsequent fiscal year is less than the in-kind value already reported, no disclosure relating to the purchase price is required.

Interconnected Agreements

12. The following is a non-exclusive list of factors to consider when determining whether agreements are "operationally and geographically interconnected" for purposes of the definition of "project":
    a. whether the agreements relate to the same resource and the same or contiguous part of a field, mineral district, or other geographic area;
    b. whether the agreements will be performed by shared key personnel or with shared equipment; and
    c. whether they are part of the same operating budget.

Appendix I:
Sources

OECD

All OECD documents are available from http://www.oecd.org

Main sources:

OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264241480-en

Additional information:

OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing
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PwC contacts

Andrew Packman
+44 (0) 1895 522104
andrew.packman@uk.pwc.com

Janet Kerr
+44 (0) 20 7804 7134
janet.kerr@uk.pwc.com

Neville Howlett
+44 (0) 20 7212 7964
neville.p.howlett@uk.pwc.com

Tom Dane
+44 (0) 20 7804 7712
thomas.a.dane@uk.pwc.com

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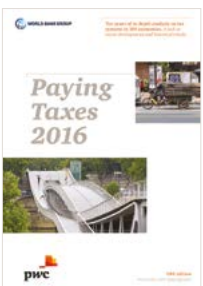

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