

GUIDANCE FOR REPORTING PAYMENTS TO GOVERNMENTS

March 2017

Introduction

The Publish What You Pay¹ anti-corruption coalition welcomes the efforts made by oil, gas and mining companies to comply with the first full year of reporting under the UK Reports on Payments to Governments Regulations 2014.² The disclosures made to date are an important step towards the stated purpose of the UK Regulations, including “to give citizens of resource-rich countries the information they need to hold their governments to account”.³ In some cases, however, the approach to reporting has not been as clear and comprehensive as it could have been, and this can result in large amounts of government revenue being unreported or over-aggregated.

The following guidance aims to help companies achieve maximum clarity and comprehensiveness in reporting their payments to governments. Reporting in line with the guidance will provide citizens and investors with the most useful information and allow companies to achieve the greatest possible benefit from their transparency efforts.

In summary, we recommend that companies should:

- Report payments made to a government by a joint venture in proportion to the company’s interest in the venture, including if payments are made indirectly via a joint venture partner or agent.
- Aggregate legal agreements for the purposes of reporting as a single project only when those legal agreements have substantially similar terms *and* are both geographically *and* operationally integrated.
- Report both the value and volume of each payment in kind of oil, gas or any mineral.
- Identify each recipient government entity by name.

1. Reporting direct and indirect joint venture payments

1.1 The UK Regulations and EU Accounting Directive do not specify how a company should report payments made by a joint venture in which the company may be an operating or non-

¹ <http://www.publishwhatyoupay.org/>

² The Reports on Payments to Governments Regulations 2014, SI 2014 No. 3209, <http://www.legislation.gov.uk/ukxi/2014/3209/contents/made> [henceforth “UK Regulations”]; also The Reports on Payments to Governments (Amendment) Regulations 2015, SI 2015 No. 1928, <http://www.legislation.gov.uk/ukxi/2015/1928/contents/made>. The Regulations implement the extractive industry reporting provisions of the 2013 EU Accounting Directive (Chapter 10, Report on Payments to Governments), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034>

³ UK Regulations, Explanatory Memorandum, <http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>, para. 7.1.

operating participant. Joint ventures are frequent throughout the extractive industries and may account for a large proportion of the payments that a company is responsible for. It is therefore important to citizens that joint venture payments to governments are reported as clearly and comprehensively as possible.

Proportionate payment reporting

1.2 Reporting companies should disclose all relevant payments to governments where the company (or one of its subsidiaries)⁴ is a joint venture participant, regardless of whether any payment is made directly by the company itself or indirectly on its behalf by another party, such as a joint venture operator or paying agent, and regardless of whether the company has a controlling or non-controlling interest in the joint venture.

1.3 Companies should report their share of payments to governments arising from joint ventures on a proportionate share basis.

1.4 A joint venture participant reporting its share of joint venture payments on a proportionate share basis should state in the notes to its disclosures: (a) whether or not it is the joint venture operator, (b) that it is reporting on a proportionate basis and its proportionate share and (c) if it is not the operator the name of the operating company, or if it is the operator the name of the non-operating participants.

1.5 In determining whether a payment has been made on a joint venture participant's behalf, as opposed to by an operator acting as principal, companies can take into account factors such as whether the underlying legal liability for the payment rests with the company (e.g. under local tax law) and/or the payment would be accounted for in its financial statements under relevant accounting rules.

Rationale

1.6 Many extractive projects are undertaken through joint venture arrangements. Parties to such joint venture arrangements often have rights to the assets or net assets of an operation, a right to audit the operator and a right to make independent reports to their shareholders, as well as a duty to report to shareholders on their assets and liabilities. Where joint venture participants appoint an operator to conduct the operations of the joint venture on their behalf, they should not cease reporting publicly on their payments to governments made via the joint venture. The most practical and comprehensive approach to joint venture payment reporting is for each joint venture partner company to disclose payments on a proportionate share basis.

1.7 This approach is generally in line with the approach proposed under equivalent legislation in Canada. Under Canada's Extractive Sector Transparency Measures Act, government guidance cites an illustrative example where payments made by an entity on behalf of a company should be attributed to the company.⁵

1.8 Proportionate reporting in joint venture contexts is in the interest of reporting companies.

⁴ All references to "reporting companies" in this Guidance include parent companies' subsidiaries that are required to report under the UK Regulations either separately or by inclusion in a consolidated report drawn up by the parent company.

⁵ Canada: Extractive Sector Transparency Measures Act (ESTMA) 2014, <http://www.nrcan.gc.ca/mining-materials/estma/18180>; Natural Resources Canada, Extractive Sector Transparency Measures Act – Guidance (March 2016), <http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA-Guidance.pdf>, page 17, section 3.7, "Attribution of payments".

Given the significant volume of payments often involved (see Statoil example, below), reporting companies that do not include the proportionate share of payments made through a joint venture lose an opportunity to show their economic contribution to a country. Where the company's involvement in a project is otherwise well known in the country, the absence of associated payment disclosures may raise questions and pose an unnecessary reputational risk. By contrast, adopting an approach that ensures payments are reported even when made via an operator demonstrates a company's commitment to the pro-transparency spirit of the UK Regulations and can have a positive reputational impact.

1.9 Several extractive companies have recognized the above benefits and have included their proportionate share of joint venture payments in their published reports on payments to governments— see examples below.

Examples: proportionate payment reporting

Rio Tinto, *Taxes paid in 2015 report*: “Where we hold a share in a joint operation, joint venture or associate, we have included Rio Tinto’s share of the tax payments of those operations consistent with our share of equity in the operations.”⁶

Statoil’s 2015 Payments to governments (published under the Norwegian reporting rule, which is substantively equivalent to the UK Regulations) includes production entitlement payments to host governments for joint ventures, including payments made via the operator. Statoil explains that it does this “because host government entitlements in some cases constitute the most significant payment to governments and because these payments are not always transparent to the civil society”.⁷ Statoil has informed PWYP that it reports such payments on a proportionate basis.⁸

Statoil’s 2015 payments to governments data illustrates the magnitude of payments made by operators on behalf of joint venture participants and the importance of joint venture non-operating participants reporting their proportionate shares of such payments. Statoil proportionately reports its 2015 production entitlements payments to host governments totalling just over US \$2 billion.⁹ Of this, \$1.9 billion (95%) was attributable to production entitlement payments for projects where Statoil was not the operator.¹⁰

In Angola alone, the value of Statoil’s disclosed production entitlement payments in 2015 for projects where it was not the operator was \$1.17 billion. Of this, \$350 million was attributed to projects in which the operator was not covered by payment disclosure rules, meaning government entitlement payments from 30% of Statoil’s production in Angola in 2015 would have remained undisclosed had the company not reported on a proportionate basis. If other European companies operating in Angola were not to report their joint venture payments proportionately, there would

⁶ <http://www.riotinto.com/investors/taxes-paid-16634.aspx>, page 3.

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http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2015/Documents/DownloadCentreFiles/01_KeyDownloads/2015%20Payments%20to%20governments.pdf, page 5.

⁸ However, Statoil reports other, less significant payments, such as area fees, only where it is the operator or “if the operator is a state-owned entity (a ‘government’), and it is possible to distinguish the payment from other cost recovery items”:

http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2015/Documents/DownloadCentreFiles/01_KeyDownloads/2015%20Payments%20to%20governments.pdf, page 4.

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http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2015/Documents/DownloadCentreFiles/01_KeyDownloads/2015%20Payments%20to%20governments.pdf, page 7.

¹⁰ Calculation by Global Witness using Statoil’s 2015 *Payments to governments* report.

be a huge loss of important payment data relating to this high-corruption-risk country.¹¹

Tullow Oil's 2015 Annual Report & Accounts discloses the company's share of production entitlements proportionately: "paid ... out of Tullow's working interest share of production in a licence".¹²

Tullow's case, like Statoil's, illustrates the magnitude of payments made by operators on behalf of joint venture participants and the importance of joint venture non-operating participants reporting their proportionate shares of payments. Out of 131 licence interests, including new ventures, in 22 countries, Tullow reports that 94 are operated by a joint venture participant on its behalf and only 36 by Tullow itself; 22 are operated by companies not required to report payments under EU or Norwegian transparency requirements.¹³ If Tullow had not reported its joint venture production entitlement payments proportionately, this would have left major gaps in its disclosures with significant payments going unreported.

2. Reporting of project-level payments

2.1 In keeping with the aim of the UK Regulations – to provide citizens with the information they need to hold governments to account – reporting companies should treat two or more separate legal agreements as reportable as a single project *only* where those agreements (a) are both operationally and geographically integrated, including in the case of joint ventures involving the identical group of project partners, (b) have substantially similar terms and (c) are signed with the same government.¹⁴

2.2 Companies should generally avoid aggregating several separate projects under broad geographical designations such as "Gulf of Mexico" or "Alaska", or grouping them by geological basin, where it would be far more helpful to citizens to disaggregate projects to a greater level of granularity.

2.3 Companies should equally not report as a single project a set of agreements that have substantially similar terms, such as those based on a model production sharing contract, but are not geographically and operationally interconnected.

2.4 In all other cases, a project should equate to the operational activities that (a) are governed by a *single* contract, licence, lease, concession or similar legal agreement and (b) form the basis for payment liabilities with a government.

Rationale

2.5 Reporting payments to governments at project level is a key requirement of the UK Regulations. Project level payment data is important to enable citizens to evaluate the benefits of

¹¹ Calculation by Global Witness using Statoil's 2015 *Payments to governments* report and Sonangol's 2015 oil concession map. Non-European joint venture operators in Angola include ExxonMobil, Chevron, Pluspetrol, Somoil and Sonangol: see US Energy Information Administration, Angola, <http://www.eia.gov/beta/international/analysis.cfm?iso=AGO>, table 1.

¹² http://www.tulloil.com/Media/docs/default-source/3_investors/2015-annual-report/tullow-oil-2015-annual-report-and-accounts.pdf?sfvrsn=2, page 171, "Transparency disclosure".

¹³ http://www.tulloil.com/Media/docs/default-source/3_investors/2015-annual-report/tullow-oil-2015-annual-report-and-accounts.pdf?sfvrsn=2, pages 165-9, "Licence interests".

¹⁴ UK Regulations 2.

specific resource extraction projects in their country to hold their governments to account. It also provides investors with a better picture of companies' risks, which are often related to a project's geographic location. The usefulness and value to citizens, including at the local level, of companies reporting payments project by project may be undermined when a company aggregates together two or more projects, thereby obscuring individual payments from public view through aggregation with payments for one or more different projects.

2.6 The UK Regulations define a project as the operational activities that (a) are governed by a single contract, licence, lease, concession or similar legal agreement and (b) form the basis for payment liabilities with a government. Two or more of any of these types of legal agreements – contracts, licences, leases, concessions or similar – may be treated as a single project for reporting purposes where they are “substantially interconnected”.¹⁵

2.7 The Regulations explain what is required for two or more legal agreements to be treated as “substantially interconnected”: they must form “a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities”.¹⁶ Where there are substantially interconnected agreements, those agreements can be, but do not have to be, governed by a single contract, joint venture, production sharing agreement or other overarching legal agreement.¹⁷

2.8 When considering whether agreements are “substantially interconnected”, reporting companies should consider the substance of the arrangements and the provision in the UK Regulations requiring that payments, activities and projects must not be artificially split or aggregated.¹⁸

Examples: reporting of project-level payments

BP describes Angolan offshore oil Block 18 and Block 31 as separate projects on its website and correctly discloses payments made for each project separately in its *Report on payments to governments – year ended 31 December 2015*.¹⁹ Although both projects are governed by production sharing contracts based on the same model agreement, the blocks are not adjacent, nor are they owned and run by the same joint venture participants.

In some cases a large project will group several licences together under a single contract, joint venture, production sharing agreement or other legal agreement, and companies may report under the UK Regulations at the level of that legal agreement. This would apply to situations such as in Alaska or Australia, where certain geographically and operationally interconnected projects comprise a large number of licences. These are typically brought together under “umbrella” agreements such as Unitized Development Agreements or State Agreements.

¹⁵ UK Regulations 2(1).

¹⁶ UK Regulations 2(6), following EU Accounting Directive, recital 45. The Canadian government has adopted the same approach: “Substantially interconnected” means forming a set of operationally and geographically integrated agreements (e.g. contracts, licenses, etc.) with substantially similar terms that are signed with a government, resulting in payment liabilities” – Natural Resources Canada, ESTMA FAQs, <http://www.nrcan.gc.ca/node/18802/#R3>

¹⁷ UK Regulations 2(7).

¹⁸ UK Regulations 5(4).

¹⁹ http://www.bp.com/en_za/southern-africa/bp-in-southern-africa/Angola/Projects.html; *Annual Report and Form 20-F 201*, <http://www.bp.com/content/dam/bp/pdf/sustainability/group-reports/bp-report-on-payments-to-governments-2015.pdf>, page 8.

Perenco UK Limited reports its operated onshore/offshore Wytch Farm oil field in the south of the United Kingdom as one project in its *Report on payments to governments – year ended 31 December 2015*.²⁰ Perenco holds three licences (PL089, PL259 and PL534) covering the Wytch Farm oil field which are “substantially interconnected”: they are adjacent to each other and relate to the same field and production facility so are operationally and geographically integrated; the licences have substantially similar terms due to the UK’s licence-based fiscal regime. Perenco’s equity interest partners that have reported under the UK regulations (Premier Oil, Ithaca Energy UK Limited and Repsol Sinopec Resource UK Limited) have similarly identified Wytch Farm as one project and attributed payments to this project accordingly.

3. Reporting payments in kind

3.1 Reporting companies should, when disclosing payments in kind, state both the *value* of such payments and their *volume* and should make clear the unit value of each payment in kind, if necessary by providing supporting notes explaining how the value has been determined.

3.2 Companies should avoid aggregating together in a single figure any cash payments with any payments in kind, and should equally avoid aggregating together in a single figure any payments in kind for differently valued commodities, such as oil and gas.

Rationale

3.3 The UK Regulations state: “Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined.”²¹

3.4 The intention of the UK Regulations is clearly, and rightly, to enable citizens to know the unit value of each payment in kind to help them understand the value of the in-kind payment received and judge whether their country has ultimately received an appropriate payment for its natural resources. Grossly overvalued payments in kind, well in excess of current market prices, for example, could indicate that a government has received a poorer deal than initially apparent. Conversely, grossly undervalued payments in kind could indicate that government officials have benefited improperly from a payment in kind whose value has not been fully disclosed.

3.5 Either form of aggregation noted in para. 3.2 above – of cash payments with payments in kind, or of payments in kind for two or more differently valued commodities – will make it impossible for citizens to know the payment in kind’s unit value, unless this is fully explained in the supporting notes.

Examples: payment in kind

Petrofac’s *Report on Payments to Governments 2015 (amended)*²² disclosed that it made two categories of royalty payments to Tunisian government bodies totalling \$2.947 million. One of these was a payment in-kind of 5,000 barrels of oil valued at £273,000, while the other was a cash payment of £2.674 million. The company correctly disaggregated its in-kind and cash payments,

²⁰ <https://extractives.companieshouse.gov.uk/company/04653066>

²¹ UK Regulations 5(6); similar requirement in 9(7).

²² <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/PFC/12987969.html>

allowing citizens to check the value of the in-kind payment against the volume and to conclude that the oil paid in kind was valued at $\text{£}273,000 \div 5,000 = \$54.6/\text{barrel}$, a reasonable figure for 2015.

Company A reports a production entitlement payment in kind to a government of \$165 million for 7,600 kilobarrels (kboe) of oil equivalent, explaining in its supporting notes that this payment was valued at the market price at time of payment. A simple calculation ($\$165 \text{ million} \div 7,600$) produces an average market price of \$21,700 per kboe or \$21.7 per barrel of oil equivalent. During the reporting period, oil prices averaged in the region of \$50 per barrel. Further inquiries indicated that the company had aggregated in its report a payment in kind in oil with a payment in kind in lower-unit-value gas. Company A should therefore disaggregate the reported in-kind payment into two separate payments: one in oil and the other in gas; and for each it should disclose separately both value and volume. Only by the company doing this would citizens be able to check the value of each in-kind payment.

4. Identification of recipient government entity

4.1 Reporting companies should identify by name each recipient government entity as well as the country where each such entity is located. Companies should avoid generic descriptors such “national government” or “regional/local government”.

Rationale

4.2 The UK Regulations require companies to report the payments they make to any “national, regional or local authority of a country”, including a “department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking” (e.g. a state owned enterprise or SOE).²³ The Regulations require companies to report “the government to which each payment has been made, *including the country of that government*” (emphasis added).²⁴

4.3 In requiring companies to identify both the governments that they have made payments to *and* the country of each such government, the UK Regulations clearly expect company reports to specify which national, regional or local authority, department, agency or SOE receives each payment (or payment category) and not just mention the country. The XML schema provided by the UK companies registrar Companies House for reporting by UK-incorporated extractives companies indicates this by requiring companies to fill in two separate fields in the “government payments” and “government payment totals” tables: (a) country code and (b) (name of) government.²⁵

4.4 For citizens to hold their governments effectively to account, they need to know by name which specific government entity receives each payment. It is not enough for citizens to be informed only that “a regional government” (or some other general designation) has received a particular payment.

4.5 In Canada the government has been monitoring company reports under ESTMA to ensure that governments are identified by name and not by terms such as “national” or “regional” and has

²³ UK Regulations 2(1).

²⁴ UK Regulations 5(1a).

²⁵ <http://xmlgw.companieshouse.gov.uk/extractives.shtml>

required companies to amend reports to properly identify the recipient government.²⁶ Government guidance for ESTMA also notes: “Reporting Entities are encouraged, where practical, to list the name of the department, agency or other body of the payee that received the payment, if more than one such body of a payee received a payment from the reporting entity.”²⁷

Example: naming of recipient government entities

Royal Dutch Shell’s Report on Payments to Governments for the Year 2015 correctly names each government entity in each country to which it has made payments. For example, in disclosing payments made in Ireland the report names the specific central government departments to which it made payments – the Commission for Energy Regulation and the Department of Communications – and the subnational government entity to which it made payments: Mayo County Council.²⁸

Further information

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Publish What You Pay is a global civil society coalition of 800 organisations across more than 50 countries united in their call for oil, gas and mining revenues to form the basis for development and improve the lives of women, youth and men in resource-rich countries.

²⁶ Company reports in Canada under ESTMA are at <http://www.nrcan.gc.ca/mining-materials/estma/18198>

²⁷ Natural Resources Canada, Extractive Sector Transparency Measures Act – Guidance (March 2016), <http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA-Guidance.pdf>, page 12, section 3.4, “Same payee”.

²⁸ http://www.shell.com/sustainability/transparency/revenues-for-governments/jcr_content/par/textimage.stream/1460962925009/43a62e840a312580b7a030a0b6719d720a03afb774d5edf22bc8f30914609748/shell-report-payments-to-governments-2015-18042016.pdf, page 7.