11th December 2014

Publish What You Pay

global witness

EU ACCOUNTING AND TRANSPARENCY DIRECTIVES: KEY ISSUES IN TRANSPOSITION

Background

The EU Accounting and Transparency Directives will require oil, gas, mining and logging companies to publish payments made to governments for access to natural resources. EU Member States have until 2015 to pass implementing legislation to bring payment reporting into law.

In the UK, the Department of Business, Innovations and Skills ("BIS") has adopted regulations implementing the Accounting Directive ("AD"), while the Treasury and the Financial Conduct Authority will implement the Transparency Directive ("TD") this month.

This note aims to share our experience of UK implementation and provide a checklist of issues that all implementing regulations must address. To protect the emerging global standard of payment reporting, implementation must be consistent across EU Member States, avoiding legislative errors which could be open to challenge in Court.

Mandatory payment reporting standard

The Accounting Directive sets out a detailed payment reporting standard which all EU Member States must adhere to, as a matter of EU law. Implementing regulations must include the following:

- Implementation deadlines[1]:
    - AD – 20 July 2015
    - TD – 26 November 2015
- Companies which must report:
    - AD: Large undertakings[2] involved in extractive activities or logging of primary forests
    - TD: companies listed on regulated stock exchange[3]
- Timing of payment reports:
    - Company must report annually, for financial years starting on or after 20 July 2015
- Consolidated payment report requirement:
    - Parent companies to prepare "consolidated payment report" covering all subsidiary undertakings (i.e. those they include in consolidated accounts)
- All reports to include following types of payments:
    - Production entitlements, taxes, royalties, dividends, bonuses, licence fees, infrastructure payments of €100,000 or more in that year
- Payment disaggregation – report must show
    - Total payments to each government
    - Total per type of payment to each government
    - Total per type of payment for each "project" (see below)

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[1] Note that certain governments have committed to implement the Accounting Directive "quickly":

- UK, France, Italy and Germany via G8 commitment: Lough Erne communique 2013 para. 38, http://www.g8.utoronto.ca/summit/2013lougherne/lough-erne-communique.html#extractives
- Sweden, Denmark and Finland: Statement 4 September 2013, http://www.whitehouse.gov/the-press-office/2013/09/04/joint-statement-kingdom-denmark-republic-finland-republic-iceland-kingdom

[2] Companies with balance sheet total €20m, Turnover of €40m, or 250 employees; also public interest entities

[3] See database of "regulated markets": http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23

- Exclusions:
    - Where company is included in its parent's consolidated payment report
    - Where company reports in a country deemed "equivalent" by European Commission

Areas where Member States have discretion/flexibility in transposition

- Publication
    - Reports must be published, but member states can specify publication method
- Penalties
    - Means by which directors are responsible for compliance and sanctions
- Reporting period and timeframe
    - Period payment reports relate to (UK: calendar year)
    - Annual reporting deadline (UK: likely 2 months after deadline for accounts)

Publish What You Pay priorities

- Publication
    - Reports should be published in a machine-readable format and in line with open data principles,
    - There must be no country-specific exemptions
    - Disaggregated reporting/definition of "project" is crucial - reporting must reflect the "substance, rather than form" of payments/activities, and should not be "artificially split or aggregated"
    - We support the UK's multi-stakeholder approach, creating a "format sub-group" with representatives of industry and NGOs to agree templates
- Penalties
    - "The penalties provided for shall be effective, proportionate and dissuasive."[4]
    - We support the approach of the UK in its regulations implementing the Accounting Directive: Companies that default or report misleadingly will face criminal sanctions.

Other issues to consider

- Avoiding further legislation where possible
    - Use existing regulations where possible to avoid delays (UK: (a) penalties consistent with corporate reporting rules and (b) within limits of existing Ministerial authority.)
- Reporting of payments
    - Only entity level taxes (e.g. corporation/profit tax) may be reported as annual total
    - Payments in kind: include value calculation and potentially production volumes
- Reporting period and timeframe
    - Reports should be prepared and delivered annually
    - Within 12 months of the end of the financial year

For further information, please contact: **James Royston, Advocacy Officer, Publish What You Pay,** jroyston@publishwhatyoupay.org

[4] Article 51 of the EU Accounting Directive: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0034