REPORTS ON PAYMENTS TO GOVERNMENTS: A REPORT ON EARLY DEVELOPMENTS AND EXPERIENCES

Eleni Chatzivgeri, Lynsie Chew, Louise Crawford, Martyn Gordon and Jim Haslam

June 2017

Abstract

We are concerned in this report to review and discuss aspects of the Reports submitted in line with the Payments to Governments Regulations. We consider the process of transposition of this Accounting Law into UK law and the early implementation or operationalization of this law in the UK. Recommendations drawn from the study will be useful for Publish What You Pay (PWYP) and other interested stakeholders in communications with government, regulators and standard setters and in general campaign activity.

This report has been published as a contribution to public understanding of the UK Reports on Payments to Governments Regulations 2014 and of company reporting under the Regulations. The research and writing were funded entirely independently of Publish What You Pay. The report represents the views of the authors and not necessarily in every respect the views of Publish What You Pay.

Please cite this work as: Eleni Chatzivgeri, Lynsie Chew, Louise Crawford, Martyn Gordon and Jim Haslam, *Reports on Payments to Governments: A Report on Early Developments and Experiences*, report for Publish What You Pay International Secretariat and Publish What You Pay UK, June 2017.

Contents

Executive Summary

In August 2016, Publish What You Pay (PWYP) asked the research team to undertake a short but intensive study to review the early transposition of *The Reports on Payments to Governments Regulations 2014* from the EU Accounting Directive Chapter 10 into UK law and furthermore the implementation of the Regulations by a sample of reporting companies within the ambit of the UK law.

In considering the transposition of Chapter 10 of the EU Accounting Directive into UK legislation, the aim of the Regulations was elaborated on by the UK Government:

"Across the world, natural resources are worth $billions and make substantial contributions to the public budgets of many developing countries. However, the citizens of these countries often remain extremely poor. … The aim of this [transposition] is to raise global standards of transparency in the extractives sector [to] improve accountability by allowing citizens in these countries to access information about payments made, and increase their ability to hold their governments to account regarding use of the revenues"[1]

Study Approach

Our study encompasses: (i) reflections on the construction of the Regulations and their interpretation by interested parties; (ii) analysis of disclosures in the form of Reports on Payments to Governments (RPG) of a sample of extractive companies coming within the ambit of the UK law after the implementation of the Regulations; and (iii) reflections on the views of stakeholders and constituencies on the nature, content and usefulness of the RPG.

The drafting of the UK legislation, with some attention given more specifically to how the EU Directive was transposed into UK law, was evaluated. Reports on Payments to Governments of a sample of 47 extractive companies listed on the London Stock Exchange (LSE) and 3 extractive unlisted companies that had filed their report with Companies House were analysed, together with interviews with key stakeholders.

Key Findings

Reflections on the construction of the law:

- Reflections on the construction of the law raise concerns about the reliability of information required to be disclosed when that information is neither audited (not even in terms of limited assurance) nor reconciled to audited annual reports and accounts.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf

- The language of the law is not as simple nor straightforward as it could be, meaning that a range of interpretations are possible for certain constructs, potentially creating conflict with reflecting the spirit or substance of the Accounting Directive. This is particularly problematic when interpreting reporting requirements relating to joint ventures and project-by-project disclosures.
- There is a lack of cohesiveness between the RPG Regulations and other regulatory initiatives such as BEPS Action 13 and the Extractive Industries Transparency Initiative (EITI). Although these other initiatives may not be legally binding, they are nevertheless becoming influential as government backed initiatives to support transparency reporting by companies.

Analysis of the RPG and related disclosures of 47 LSE-listed and 3 non-LSE listed extractive companies indicates:

- All companies disclose the country of the government[2] to which payments are made. Most companies disclose the governments to which payments are made (although ten do not specify the specific tax authority), the amount paid to each government (10 did provide a breakdown but not a total) and the total amount per type of payment made to each government (5 did not - one of them did provide total amount but did not specify the government and 4 companies did provide a breakdown but did not provide a total).
- The majority of companies (36 and 38, respectively) disclosed the total amount of payment made to distinct projects and the total amount per type of payment, respectively.
- Taxes levied (46 companies), fees (38) and royalties (31) were the most frequently disclosed types of payments made to governments, followed by infrastructure improvements (22) and production entitlements (16). Only a few companies in the sample disclosed information about bonus payments (5) or dividends (2).
- Not many companies elaborated on how they reflected the substance of payments over their legal form.
- Not many companies disclosed information about payments in-kind, and where they did, disclosure was often partial.
- Few companies reconciled their RPG disclosures to related disclosures within their audited annual report and accounts or their CSR report.

Views of stakeholders and constituencies on the nature, content and usefulness of the RPG have been gathered through a series of semi-structured interviews and will be disseminated to further inform the preliminary findings of the research.

[2] As defined in the Regulations, government means any national, regional or local authority of a country, and includes a department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking.

Recommendations

The findings of this report suggest a number of recommendations for civil society to campaign for, for legislators to consider in upcoming reviews and for companies to take note of in terms of developing best practice.

(1) Consider whether the Regulations would benefit from an audit requirement for RPGs.
(2) Maintain the current de minimis level for reporting payments but ensure that the Regulations guard against possible disaggregation.
(3) Provide further clarity on the term 'substantially interconnected', as it applies to projects.
(4) Amend the Regulations to ensure that companies report payments made to governments on their behalf by joint venture operators on a proportional basis relative to their share in the joint venture.
(5) Provide clarity on the process for monitoring compliance with the Regulations. Specifically outline the point of appeal where instances of non-compliance are evident and also provide assurance that an institutional mechanism is in place for checking compliance.
(6) Consider making it a requirement under the Regulations for RPG to be reconciled to annual accounts.
(7) Consider widening the definition of "extractive industries" under the Regulations to take account of integrated business models employed by businesses in the extractive sectors.
(8) Consider how the Regulations can be better integrated with other transparency initiatives such as EITI and the OECD's BEPS Action 13.
(9) Ensure that the reports are used and evidence is provided of their usage in the spirit of cooperation to better enhance transparency in the sector.
(10) Consider reviewing the format in which the RPG are filed in order to ensure that these are user friendly.
(11) Companies should consider providing additional narrative disclosures in their RPG to enable better use of the information. This may include disclosure of where there are no reportable payments.

1.0 Introduction

Aim, scope and approach of this study

In August 2016, PWYP asked the research team to undertake a short but intensive study to review the early transposition of *The Reports on Payments to Governments Regulations 2014* (hereafter referred to as 'the Regulations') from the EU Accounting Directive (Ch. 10 of Directive 2013/34/EU of the European Parliament and of the Council) into UK law and the implementation of the Regulations by a sample of reporting companies within the ambit of the UK law. The Regulations became effective for reporting periods starting on or after 1 January 2015, with the acceptance of Statutory Instrument 3209 ("SI 3209"). Compliance with the Regulations requires UK-incorporated 'large' or 'public interest' entities active in the extractive or primary logging industries to publish a Report on Payments to Governments (RPG). In addition, the Financial Conduct Authority's Disclosure and Transparency Rules, implementing the EU Transparency Directive Amending Directive (2013/50/EU), article 1(5), applies the same requirement to report under the Regulations to London Stock Exchange Main Market listed companies in extractive sectors. The RPG constitutes a form of country-by-country reporting in that it requires reporting of payments made by in scope companies to governments by the country of the recipient government. It facilitates transparency regarding payments made to governments by companies, many of which operate in developing countries around the world to extract natural resources.

The research had three main objectives:

1. To reflect on the Regulations and how they have been interpreted by stakeholders/constituencies/interested parties;
2. To review the available RPG of selected UK extractive companies after the implementation of the Regulations, and to identify reporting practice specifically in relation to:
    i. Categories and definitions of payments made to governments and the countries and governments disclosed
    ii. Project aggregation
    iii. Indicating transparency of payments made on behalf of joint venture participants by operating partners
    iv. Indicating transparency of payments made to state owned enterprises acting as field operators
    v. Attempting to indicate potential instances of non-compliance with the UK Regulations beyond those indicated in ii to iv, such as non-identification of government recipients and non-reporting of value and volume where required for in-kind payments (particularly production entitlements).
3. To consider the views of stakeholders and constituencies about transparency reporting and nature, content and usefulness of the RPG.

The research was undertaken in three stages:

- Review of the legislation (informed by legal Counsel) and Industry Guidance to indicate possible interpretations of the law.
- Design and usage of a disclosure checklist to benchmark mandatory RPG disclosures and voluntary disclosures of a sample of extractive companies.
- Design and usage of questions to ask stakeholders and constituencies in semi-structured interviews about the RPG.

The research has focused on gathering evidence in order to draw conclusions regarding how effective the regulations are, how the regulations are being put into practice by industry at company level and how useful the information reported is for civil society and other users. Recommendations are outlined; it is intended that these recommendations will be useful to contribute to the separate government scheduled consultations concerning the UK and EU legislation.

The research does not address the issue of government reporting in resource rich countries. This project also does not take into consideration all of the companies identified as having a reporting requirement as not all of them had been required to submit an RPG at the time data was collected.

Contribution and Relevance to PWYP

This study is designed to obtain a better understanding of how mandatory transparency reporting regulations have been developed and interpreted in the UK context, how large extractive companies and other in scope entities have implemented such reporting in practice and insights from stakeholders and constituencies regarding such reporting. The outcome of this research intends to inform contemporary debates on accountability and transparency practices in the extractives sector.

This study has the potential to contribute to the development of transparency reporting in the UK, the EU and beyond. The empirical evidence gathered will underpin recommendations made by the research team. These evidence-based policy recommendations will be useful for PWYP and other interested stakeholders in communications with government, regulators and standard setters and in general campaign activity.

Specifically, PWYP will be able to draw on this study to develop their response to statutory review of the Regulations scheduled to be completed by The Department for Business, Energy and Industrial Strategy (BEIS) (formerly known as The Department for Business Innovation and Skills and referred to as such in the UK Regulations) by 1 December 2017. This study should similarly inform a review of the EU level provisions scheduled in 2018 (for which further research by the research team is planned on EU implementation beyond the UK setting).

Structure of this report

This report presents five further sections. Section 2 presents a brief contextual overview. Section 3 outlines the detailed research approach. Sections 4 and 5 present our findings relating to the three aims of our study: reflection on the Regulations and review of RPG disclosures, respectively, with related views from stakeholder interviews discussed in these two sections. In Section 6 we present our conclusion and policy recommendations.

2.0 Contextual Overview

The legislation

The Regulations are a transposition into UK law of Chapter 10 of Directive 2013/34/EU of the European Parliament and of the Council (the "Directive"). The Regulations were brought into UK law in advance of the transposition deadline of 20 July 2015 (a deadline that several other member states did not meet) and also in advance of the rest of the Directive, which was transposed as part of an amendment to the Companies Act 2006 on the transposition date.

The reason cited for early transposition of Chapter 10 in the Explanatory Memorandum to SI 3209 is that it reflects a political commitment by the then UK Prime Minister, David Cameron, as part of the UK's G8 Presidency, to demonstrate the UK's commitment to the global transparency agenda.

The Regulations require all large undertakings and all public-interest entities active in extractive industries (oil and gas, mining and logging of primary forests) to prepare and make public a report on the payments they make to governments globally.

As noted above, the legislation will be subject to a consultation at the UK level during 2017 to assess the impact of the Regulations following the first reporting cycle, which for most affected undertakings will have coincided with the filing of their statutory accounts for the year ended 31 December 2015 or 31 March 2016. Also, as noted in the previous section, a similar review at the EU level is planned in 2018.

Transparency and accountability

The adoption of these regulations follows calls for greater transparency in the extractive industries in order to understand and address the phenomenon known as "the resource curse". This phrase describes the situation whereby countries relatively rich in natural resources somehow fail to translate this wealth into securing improvement in the socio-economic conditions of their populations. This is a particularly serious issue in situations where socio-economic conditions are poor. The issue is also

controversial as multi-national enterprises are able to generate seemingly large returns for their investors from extracting these resources.

The calls for greater accountability and transparency (or openness) focus substantively on two key areas. First, there is an interest in making clearer the socio-economic impact of extractive activities carried out in the relatively resource rich countries upon these countries themselves. Second, and more specifically, there is an interest in disclosing how much money is received, arising from such activities, directly by the central and local administrations of every relatively resource rich country's government – and in making visible by whom the payments (in forms such as corporate taxes, fees, license payments and royalties) are made. Thus, it is intended that a light is cast on the resource curse and aspects of the performance of relatively resource rich countries as well as the financial sums paid directly by corporations to the governments of these countries.

Contemporary developments in the international context

The UK vote to leave the EU ("Brexit") and the election of the Trump administration in the USA have altered the political landscape in which the Regulations now operate.

The effect that Brexit will have on most individual pieces of EU legislation that have been transposed into UK law is as yet unclear. The government has stated its intention to introduce a "Great Repeal Bill" in the next Queen's speech. The purpose of the Bill will be to repeal certain Acts, such as the European Communities Act 1972, which will not be compatible with UK law post Brexit. Furthermore, the government has stated that:

"…the Great Repeal Bill will contain delegated powers to enable the Government to adapt any laws on the statute book that originate from the EU so as to fit the UK's new relationship with the EU. This may require major swathes of the statute book to be assessed to determine which laws will be able to function after Brexit day."[3]

There has as yet been no stated intention from the government to alter the Regulations imposed by SI 3209, as part of the Brexit process. The Regulations were adopted by the UK early and seemingly enthusiastically as part of an agenda to promote greater transparency in business. The early adoption coupled with the high-profile support of the Prime Minister at the time, in the G8 forum, could be taken as a positive indication that the Regulations are likely to remain in place in the UK despite changes to the UK's relationship with the EU.

It is worth noting, however, that the global political environment has changed significantly since the Regulations were brought into force, most

[3] http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793

notably with the election of Donald Trump as President of the USA. Trump campaigned for election with promises to stimulate business, partly through cutting regulation. Following his inauguration as President, Trump gave Presidential approval for the repeal of a rule imposed by the Securities and Exchange Commission (SEC) implementing section 1504 of the Dodd Frank Act (s1504), which required US extractive companies to disclose payments to governments with similar requirements to Chapter 10. At the time of writing, the law (Dodd-Frank, including s1504) remains intact, and the SEC remains time bound to produce a new rule by February 2018. The voiding of the SEC rule for s1504 may be interpreted by some as giving US companies a competitive advantage over their counterparts in Europe, including in the UK, as a result of the reduced disclosure requirements. In this respect, Trump's election potentially poses a threat to the UK Regulations and beyond these to the Regulations at the EU level. However, it is the case that companies themselves, as well as civil society and other commentators argue that greater transparency is in fact in companies' enlightened self-interest and helps secure their social licence to operate.

3.0 Approach to the Research

Reflections on the construction and interpretation of the Regulations

A focus of this research was to assess the drafting of the legislation, with some attention given more specifically to how the EU Directive was transposed into UK law. This involved assessment of whether the legislation in its current form is likely to achieve its substantive and ostensible rationale. Finer parts of the legislation have been examined in detail in line with concerns being raised that these may be interpreted in such a way as to dilute the effectiveness of the Regulations. Specifically, the Regulations, Chapter 10 of the EU Accounting Directive, and guidelines published by the International Association of Oil & Gas Producers (IOGP) were reviewed. The assessment of these documents was explored further in a semi-structured interview with legal counsel. Specific areas of concern were:

- The treatment of joint ventures under the Regulations
- The transparency of payments made to state owned enterprises acting as field operators in the oil and gas sector
- The aggregation of payments at a project level
- The de minimis reporting requirement

Analysis of the RPG of extractive companies coming within the ambit of the UK law

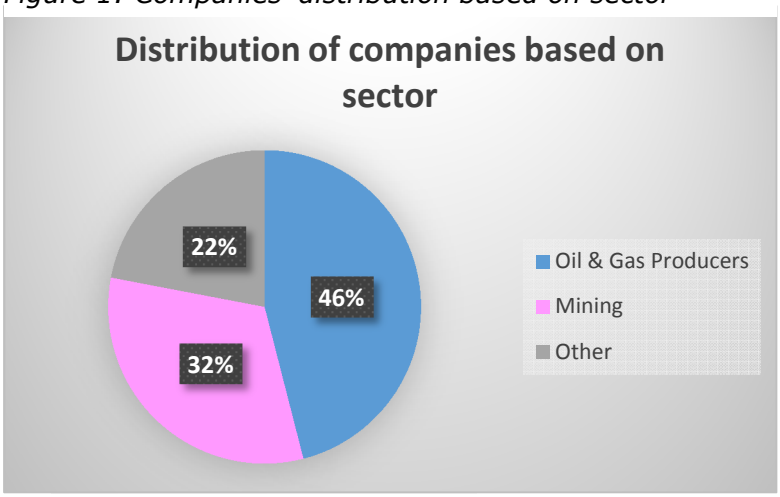
The sample

In order to examine the disclosures made by companies and assess the nature and scope of information provided, a sample of RPG were analysed. The sample was made up of 47 companies listed on the London Stock Exchange (LSE) and 3 unlisted companies that had filed their report with Companies House. Our sample of 50 companies is detailed in Appendix 1 and captures those companies which had reported RPGs by early December 2016, which is when we completed the collection of empirical disclosure evidence for this report.

An additional two companies did submit a file to Companies House, but they did not report any payments - they disclosed a value of zero. These two companies' annual report and accounts were analysed and it was found that both of them appeared to be performing very poorly in financial terms with large tax losses and were therefore excluded from the analysis on the basis that they were unlikely to have made any reportable payments.

As can be seen from Graph 1, 23 (46%) companies in the sample are Oil and Gas producers, 16 (32%) are mining companies and 11 (22%) operated in 'other' LSE categories, which include: Industrial Metals, Gas, Water & Multi-utilities, Forestry & Paper, Oil Equipment, Services & Distribution, General Financial, and Food & Drug retailers.[4]

Figure 1: Companies' distribution based on sector



See Appendix 1 Panel C for companies included in "Other" sectors

Of the 50 reporting companies, 28 were incorporated in Great Britain (GB), 21 outside the EU, and 1 within the EU (see Table 1).

[4] The operations of the companies included in this category relate to the extractive industries and do, therefore, fall under The Regulations.

Companies are required to submit the RPG to the UK Companies House using a CVS spreadsheet output. However, Table 1 shows, three different reporting formats of RPG were discerned in our sample: standard CSV spreadsheets only (9 companies); CVS spreadsheet plus a short PDF report (14 companies); CVS spreadsheet plus a long PDF report (6 companies); and a PDF report only (21 companies). We analysed the CVS spreadsheet of the 29 companies that presented their RPG using this format, as obtained from Companies House. For the remaining 21 companies, PDF files published on the respective company website were used for the analysis.[5]

Table 1: Sample profile and disclosure style of RPG[6]

Sector	**Oil and Gas**			**Mining**			**Other**			**Total**
Jurisdiction	**GB**	**EU**	**Non-EU**	**GB**	**EU**	**Non-EU**	**GB**	**EU**	**Non-EU**	
CSV spreadsheet	3	0	2	3	0	0	1	0	0	**9**
CSV spreadsheet + Short PDF	6	0	0	5	0	1	2	0	0	**14**
CSV spreadsheet + Long PDF	2	0	0	2	0	1*	1	0	0	**6**
PDF only	1	0	9	1	0	3**	1	1	5**	**21**
Sub-total	**12**	**0**	**11**	**11**	**0**	**5**	**5**	**1**	**5**	
Total	23			16			11			**50**

Note: GB = incorporated in Great Britain; EU = incorporated in EU, excluding GB; Non-EU = incorporated outside EU; *Non-EU company incorporated in Jersey; **Non-EU includes companies incorporated in Jersey and British Virgin Islands.

In addition to analysing all 50 companies in the sample for compliance with the Regulations, the long PDF reports of 7 companies, hereafter referred to as "Sample7" (BP, Glencore, Evraz, Rosneft,[7] Royal Dutch Shell, Rio Tinto, BHP Billiton) were analysed in depth. Sample7 companies produced long PDF reports that included tables explaining the different payments to

[5] CSV spreadsheets were not expected for 18 of these 21 companies as they were incorporated outside of the UK. However, 3 GB that were expected to submit a CSV spreadsheet had not done so, at the time we collected our data.

[6] Appendix 1 shows the files available and files used for each company for the disclosure analysis.

[7] Rosneft is incorporated in Russia and did not produce a CSV spreadsheet; all other companies in Sample7 produced a CSV and long PDF.

governments and detailed information on how the Regulations had been interpreted, infographics and data tables, details of economic contributions not captured by the Regulations and in one case (BP) a 'limited assurance' report. Some companies produced a "short PDF" these were generally no more than eight pages long with tables showing payments and in some instances short narratives, which in most cases focused on explaining the requirement under which the RPG was filed and the basis of preparation.

Disclosure Checklist and analysis

A disclosure checklist was developed based on detailed analysis of the following three source documents:

- S.I. 2014 No. 3209: The Reports on Payments to Governments Regulations 2014,
- EU Accounting Directive: Chapter 10 - Report on Payments to Governments, and
- The Reports on Payments to Governments Regulations 2014 (as amended): Industry Guidance.[8]

The disclosure checklist included both the mandatory disclosures as well as a list of further possible voluntary disclosures (Appendix 2). This was used to note down the relevant RPG mandatory disclosures by each company in the sample. Once the RPG were analysed, the results were transferred onto an excel spreadsheet to produce descriptive summaries. Further detailed analysis of voluntary disclosures was undertaken for Sample7 companies.

Prior to finalising the disclosure checklist, early analysis of 23 companies was undertaken using PDF files available on the respective company websites (Appendix 3). It is of interest that inconsistencies were evident between the disclosures made by companies in their RPG CSV spreadsheet compared to their PDF report (which some companies chose to post online- this relates to the preliminary analysis of 23 companies for which both a CSV and a PDF file was available at the time data was collected). Two companies specified the government to which the payments were made in their PDF file, but not in the CSV file submitted to Companies House, while one other company did specify it in the CSV file but not in the PDF file. Another example of inconsistency between the two different file types relates to the total amount of payments made for each project; one company did not provide any project information in the PDF file, despite the fact that all the necessary information is included in the CSV file, while another company provides a breakdown of the payments along with the total as part of the PDF file, but only a breakdown of the payments when it comes to the CSV file.

Our analysis of disclosures relevant to RPG also included reviewing the audited annual report and accounts ("accounts") and corporate social responsibility reports ("CSR") for Sampe7 companies. When analysing the Sample7 companies, specific attention was paid to the following disclosures in the companies' accounts: segmental reporting disclosures (IFRS 8), the

[8] IOGP (2016). The Reports on Payments to Government Regulations 2014 [as amended]: Industry Guidance.

investment in subsidiaries note, the strategic review and the tax note (IAS 12) as well as the disclosures on litigation provisions. These disclosures were examined in detail in conjunction with the RPG for three purposes. Firstly, it was hoped that by examining the IFRS 8 and IAS 12 notes it would be possible to link the RPG information to the Accounts in order to contextualise the amounts of tax paid within the performance of the group as a whole. The investment in subsidiaries note was analysed to assess the total geographic coverage of the group and so compare this to the coverage of the RPG. The strategic review and the litigation provisions were reviewed in order to highlight any cases where tax was in dispute in a particular territory or where tax was highlighted as a particular risk in an effort to uncover any cases of non-compliance or aggressive tax policy

Semi-structured interviews

Having analysed the RPG of the companies in our sample, a number of interesting findings emerged. These findings, together with observations made in the literature and from reflecting on the construction of the Regulations, were used to design a set of questions to guide semi-structured interviews with stakeholders and constituencies. The interviewees were identified through the researchers' and PWYP contacts (see Table 2). Interviewees were consulted on a variety of issues, including: civil society and calls for transparency; development and introduction of transparency legislation; industry lobbying and guidelines; threshold; audit and assurance; projects; joint ventures; government consultations. Relevant and interesting observations from these interviews are used throughout Sections 4 and 5 of this report.[9]

[9] A fuller analysis of semi-structured interviews will be included in the monograph supporting this report, Chatzivgeri et al. (2017), available June 2017.

Table 2: Interviewee profile and stakeholder/constituency group

Stakeholder /constituency Group	Interviewee	Position
Preparer	P1	Tax Accountant
Industry bodies	In1	Representative of or consultant to industry
	In2	Representative of or consultant to industry
	In3	Representative of or consultant to industry
	In4	Representative of or consultant to industry
Auditor	A1	Partner
Legal counsel	L1	Retired
NGO transparency campaigners	T1	Campaigner
	T2	Campaigner
NGO Users of and campaigners for transparency reports	N1	NGO Advocate
	N2	NGO Advocate
Civil Servant	C1	
	C2	
	C3 C4	
Politician	Po1	

4.0 Findings: Reflections on the construction and interpretation of the law

Reflecting on how the law was constructed and how it might be interpreted is relevant for the analysis of the law in practice. For instance, it can draw attention to issues that appear to have been contentious and indicate possible practices that might be against the spirit of the law while seeking to comply with its letter. Regarding the issue of interpretation, industry guidelines are a particularly worthy consideration. As the UK law was substantially meant to be a transposition of an EU directive in a form as close as possible to a one-to-one correspondence with the directive, issues in the drafting of the law may be mainly located at the EU level (an on-going and future concern of our research). At the same time, there was substantial lobbying by industry not only at the EU level but also in the UK context. Some of the latter lobbying tended to repeat the concerns expressed at the EU level, while some reflected concerns about those aspects of the law that the UK government had discretion to legislate upon at State level (including penalties for non-compliance and the precise timing of the law's introduction).

Brief overview of concerns of the industry lobby (UK law)

There were a number of views expressed by corporate lobbyists in relation to the UK law when it was in process; that amounted to challenges to the intended function of the law. Such views were evident in corporate responses to the UK government consultation in 2014, prior to the Regulations being accepted into UK law. These included the following views. Firstly, there was a concern that mandatory public disclosure requirements can become a 'tick box' exercise rather than enabling a clear articulation of information useful to an intended user. Secondly concern was expressed about the costs involved, which some deemed significant. Many requested more time in which to meet the compliance requirements. Reference was made to the cost of electronic filing. And several sought more leniency in respect of proposed penalties. Thirdly, also related to the point about costs, there was concern about a disproportionate burden being placed on UK (and EU) companies so that company competitiveness would be reduced. In this regard, some pointed to the need to monitor what was happening with S1504 of the US Dodd-Frank Act, which at the time of the consultation was being reconsidered after a law suit, mounted by representatives of the US extractives industry, challenged its operation. A reduction in competitiveness was portrayed as potentially being counter-productive in terms of the underlying aims of transparency – where investment was linked positively to economic development it might be reduced or curtailed. Some referred to finding themselves in conflict with host-government laws and confidentiality obligations - where there is a conflict, the law is quite clear that companies cannot be excused. Some even expressed concern about the safety of their staff. These arguments are well known to civil society, which has worked hard to counter them. And, of course, the US

experience with Dodd-Frank alone is indicative of the corporate opposition to the kind of transparency provisions at stake. What is of interest in relation to the EU and UK laws is that in spite of the concerns expressed, the laws were passed. And in the case of the UK, the statutory instrument was passed earlier than the targeted deadline date. This achievement can be seen as a base on which to build. And it may also suggest that the industry lobby may include significant forces prepared to acknowledge a space for negotiation, for something workable and clear, rather than being in a position of absolute opposition. It might be acknowledged that a number of companies in the relevant industries referred to supporting the law's intentions. While caveats typically follow such commitment, this is a degree better than outright explicit opposition.

Some comments on the UK Law and Industry Guidance

One observation about the law itself that may be made is that the language of the law is not as simple or as straightforward as one might have assumed it would be given the basic principle it is ostensibly trying to enact (with the rationale suggesting the case for transparency of as many payments as possible into governments, central and local, that an entity within the scope of the law should be aware of as arising from its operations – so long as multiple counts of those payments are avoided). Off the record comments were made to us by three interviewees, that EU law is often drafted quite vaguely to secure agreement across the different countries of the EU. Further, there will be a limit to how much EU law can be made clearer in transposition given the concern that it must be as far as possible transposed into UK law on a one-to-one basis. An off the record industry view was that the law was far from clear. At the same time, expert opinion deemed the UK law clear enough to a lawyer and indeed in this context the view was upheld that the law clearly reflected its rationale. Specifically here we consider evidence gathered in relation to: de minimis provisions; audit and assurance; forthcoming consultations; project level payments and the definition of 'substantially interconnected'; joint ventures; and the cost of reporting payments to governments.

De minimis

Another observation can be made regarding the de minimis provisions. Including size criteria in the law may make forms of avoidance and evasion easier, through some kinds of disaggregation of payments. At the same time, civil servants and industry representatives emphasized that in their view the size criteria was set very low so that many were brought into the law – with the relative burden of compliance on smaller companies being significant.

Audit and assurance

Further, there is no provision that the RPG be audited. This absence was for some explained by costs, which were argued by some companies to be potentially significant. One commentator felt that because the RPG was prepared separate from the accounts it would not necessarily be seen as a report to be audited (another suggested that this justified the lack of audit). Here, it can be noted that the international auditing standards refer to forms of assurance that stop short of a less than full audit. Notably, the concept of 'limited assurance' is recognised in these standards[10]. The Regulations (and Chapter 10), however, do not require limited assurance. Further, there is no requirement that the RPG need to be reconciled to company accounting information in annual reports. Since the latter is audited, such reconciliation would potentially increase assurance.

Forthcoming government consultations

That both the UK and EU laws are to be reviewed relatively soon is worth reflecting upon. It is scheduled for times arguably when it will be much too early to assess these laws, as was mentioned by interviewees. The early implementation of the law in the UK is attributed by many to UK government enthusiasm – although some simply saw it as the UK, at least in respect of this law, 'following the EU rules' (while others seriously lagged this lead). Further, it allows the UK government to better influence the EU review (a view the efficacy of which might not be as strong post-Brexit). The early review also provides an early opportunity for the most negative of judgements. While amongst interviewees no one expressed the view that the law should be completely abandoned, even in the wake of the decision taken by the Trump administration, it may be reasonable to conclude that a strong defence and promotion of the law, albeit with suggested modifications, is going to be important.

Project level payments and 'substantially interconnected'

An interesting aspect of the initial EU law, which was appreciated by legal counsel, was the way in which the construct 'substantially interconnected' is explained in the EU Law (Article 41). Basically, it is not explained – which means it is a matter of legal interpretation, and counsel advises a range of interpretations are possible, from narrow to broad, if there is the question of reflecting the spirit or substance of the Accounting Directive. The construct 'substantially interconnected' is *illustrated* in the pre-amble to the Directive (it is in Recital 45). This may reflect that the term was controversial – in the interests of getting the Directive passed within a parliamentary timeframe, putting something in the pre-amble may have been seen as an effective compromise. Interestingly, the illustration from Recital 45 has been taken into the main body of the Regulations at pp. 5-7, which raises questions about this aspect of the law.

The International Association of Oil & Gas Producers' Guidance (IOGP Guidance) was drafted subsequent to a working group that included the

[10] International Standard on Assurance Engagements (ISAE) 3000

International Council on Mining and Metals and the BIS (now BEIS). The latter were keen to encourage industry guidelines and reviewed the IOGP guidance although in the end stepped back from endorsing it, as this may have been seen as a controversial move. Civil society representatives were disappointed by the consultative process and felt that there was a relative failure to take into account their feedback.

The Industry Guidance is deemed contentious by legal counsel in its interpretation of the construct 'substantially interconnected'. Following Industry Guidance, companies might disingenuously aggregate payments in their reports to avoid providing project level data (although clearly the guidance is not directly advocating that). The letter of the law may permit this although such practices arguably contravene the spirit of the law and indeed a reasonable interpretation of the law.

Regarding project level aggregation, there are a number of issues that need to be appreciated, including perhaps in relation to future negotiations over the law. The rationale for project level reporting is appreciated quite widely. For instance, civil servants understood this rationale, even if they had an appreciation of it also implying costly practices. Industry representatives also saw the point about project level reporting – the concern to bring attention to areas within countries and their local populations – but they expressed concern about how often project level reporting would be helpful in practice. Perhaps a significant amount of project level reporting in practice may not be identifying the sorts of geographical area that PWYP want to bring a focus to. Against that, civil society representatives may set examples of cases where project level reporting has been very helpful or promises to be, for example in identifying payments for licences or production sharing payments. The cost issue is here deemed a significant one – in that it is seen as costly by industry, it was highlighted in interviews with preparers and industry representatives that these types of allocations may not be easily obtained from existing systems and their creations does require the allocation of tax and finance resources which can amount to a significant cost to business. And even with goodwill on the part of preparers, there is an amount of subjectivity and complexity involved in apportioning financial flows to particular fields or projects. In regard to tax payments, this may work more straightforwardly for field by field taxes but regarding corporate tax, reporting systems are not set up to stream these liabilities out on a project by project basis and neither are taxes levied this way. Evidence from interviewees and our review of the RPG suggests that companies will take their own view on apportionment which may result in a lack of consistency. And if fields are under the sea, there are difficulties allocating these to any on shore sites even before further complex apportionment is made. For some, civil society campaigners and industry representatives interviewed, the inconsistencies in practice arising from the law as it is (and perhaps it is very difficult for it to be otherwise) negates the value of project level reporting – even to the extent that a prominent civil society campaigner seriously questioned the commitment to project level reporting at least as it was currently done. The arbitrariness about how projects are aggregated may lead not only to inconsistency but also potentially to obfuscation, as suggested above.

Joint ventures

Returning to the Industry Guidance, it states that payments made on behalf of participants in joint ventures by the operator should be reported by the operator. Thus, if a joint venture project is operated by a company that is not subject to the Regulations or Chapter 10 and the joint venture is structured so that payments are made by the operator on behalf of the joint venture participants, no payments would be reported for the project (at least following the UK law or this interpretation of it). Companies might here evade disclosure by adjusting the payment structure employed by their joint ventures (although this might for some companies not be an especially easy thing to successfully arrange). Again, the guidance might, even unintentionally, be suggestive of practices against the spirit and even a reasonable appreciation of the law. The guidance prompted PWYP to express three main concerns about joint venture arrangements:

1. Joint venture structures may be used to avoid certain entities or business vehicles falling within the scope of the regulations.
2. Payments made to national resource companies in their capacity as JV partners may be excluded when in fact they are payments to governments.
3. Payments made to operating partners under joint venture billing may eventually be remitted to governments. However, if the operating partner in the JV does not fall within the scope of Chapter 10 then these payments may go unreported.

When interviewed on this point, a preparer, an auditor and an industry representative thought that it was highly unlikely that an arrangement would be structured with the intent of avoiding the Chapter 10 disclosures. Each interviewee highlighted the complex commercial arrangements which surround Joint Venture arrangements and noted that the commercial and risk spreading aspects of entering into these agreements dominate the form they take - some JV agreements require government approval to at least ostensibly ensure appropriate stewardship of assets. Whether there is a danger of Joint Ventures being set up to avoid the disclosures or not, it is the case that these structures are commonplace in oil and gas production and so the risk of under reported payments exists.

Similar to the case of Joint Venture arrangements elaborated above, in advising on reporting payments to state owned companies acting as field operators, the Industry Guidance states that disclosure is only required when payments that are in-scope (and satisfy the size criteria) are distinguishable from other costs. Whether or not a payment is "distinguishable" may be open to different interpretations and may depend largely on a company's internal reporting systems and so therefore may be inconsistent across the industry. This again might indicate practices that are against the spirit of the law and arguably its reasonable interpretation.

Cost of the system

The Industry Guidance is not written from a position opposing transparency, however, and indeed stresses the need to establish a common reporting mechanism that is 'user-friendly'. A key concern expressed in the guidance is that of the cost of the reporting system. It seems likely that the interpretation of substantially interconnected, the highlighting of payments by operators on behalf of joint venture participants and the point concerning distinguishable in-scope payments to state owned companies acting as field operators, are borne out of a concern about costs and a perceived lack of clarity in the law. This may be a plea for a clearer set of rules that is less subject to misinterpretation as well as a set of rules that are reasonable in the context and not excessively costly. At the same time, legal counsel is of the view that the law does reasonably well reflect its underlying rationale. This may still suggest a degree of negotiating space.

The RPG and other regulatory initiatives

A further issue that exists in the discourse around the RPG is the lack of cohesiveness between the RPG Regulations and other regulatory initiatives (which may not be legally binding but are nevertheless becoming influential as initiatives backed by government or international bodies). This lack of cohesion was a consistent source of concern expressed by an auditor, a preparer and several industry representatives interviewed.

The preparer we interviewed highlighted the duplication of effort required in order to file both EITI reports and RPG. The fact that the requirements for the two initiatives do not match meant additional effort and cost was incurred in providing two different and yet similar reports[11].

It is felt that this disparity may also impact the usefulness of the information published under the Regulations, EITI and further voluntary disclosures e.g. through CSR reports. This is especially the case where some or all of the information provided is not reconcilable to group accounts.

The preparer and auditor interviewed also expressed curiosity in this context as to whether the RPG was used or viewed by anyone. When compared to EITI reports, which are third party reviewed, there was a feeling that these reports were prepared and filed but that there was a limited audience for the information. Of course, here it should be noted that it is the first reporting cycle for the RPG and that (aside from the legal backing) the RPG has some strengths over the EITI report. But, again, this

[11] A further form of country-by-country reporting has been introduced in the UK by The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (http://www.legislation.gov.uk/uksi/2016/237/contents/made) for accounting periods beginning on or after 1 January 2016 to comply with the OECD's Base Erosion and Profit Shifting (BEPS) Action 13 rules, which will require more reports to be prepared and submitted to HMRC using similar (but nevertheless different) information (to be used for a slightly different purpose). Some companies reporting under the Regulations will also be required to report under these new rules.

underlines the importance for advocates of the RPG in its current form or in an improved form of evidencing actual and potential usages of the RPG. There may be value in reviewing the various initiatives and seeking to rationalise the information requested both to minimise the cost to business and to avoid the issue of reconciling large volumes of similar information prepared on slightly different bases. An important consideration here is to try to 'level up' even while rationalising or even compromising.

Legislative assurance of jurisdictional tax compliance

From an economic point of view, the disclosure of payments made to governments provides civil society with additional information to assess the investment of revenues raised by governments through exploitation of natural resources. This is useful information for holding governments to account on spending. However what this information does not disclose is whether the amount of taxes paid by companies is what it should have been, in line with the applicable local legislation. The lack of a reference point for assessing compliance with jurisdictional tax law means that civil society users are unable to judge whether governments are enforcing tax legislation in line with the spirit and letter of the law and whether companies are employing legal avoidance methods or adopting illegal tax evasion practices. RPG are of great relevance to know what payments are being made to governments. However they are of limited use in communicating the reasonableness of those payments and whether such payments reflect what national governments should have received according to national tax.

Potentially, the OECD's introduction of a form of country-by-country reporting through BEPS Action 13, will complement the form of country-by-country reporting reflected in RPG. One of the largest areas for potential tax avoidance by transnational corporate companies (TNCs) is the use of transfer pricing to shift profits intra-group from high to a lower tax jurisdiction. Action 13 requires TNCs to complete a template for each separate jurisdiction in which they operate, to disclose the following information: tax jurisdiction, related party and third party revenues, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, tangible non-cash assets. This information is filed with the relevant tax authority to aid them in assessing transfer pricing risk.

The information disclosed in the templates is regarded by the OECD as providing sufficient information to allow tax authorities to undertake a transfer pricing risk assessment, although the OECD acknowledges that further information may be required in order to carry out a full transfer pricing review[12].

As part of the review of RPG reports, the segmental reporting disclosures (IFRS 8) of the seven sample companies reviewed in detail were examined in conjunction with the RPG numbers to assess whether information

[12] OECD BEPS Final Report - Action 13 Chapter V Paragraph B5

required for the BEPS Action 13 templates could be constructed. However, this proved to be extremely difficult due to most IFRS 8 disclosures being prepared on an operating segment rather than a geographical basis.

In addition to Action 13 developments, we learned from our interviews with civil society stakeholders that they strongly advocate contract transparency, which is increasing in the extractives sector, and legislation-based licensing regimes. The publication of these contracts, especially where agreements contain a production or profit sharing clause may have the potential to provide civil society with further useful information enabling better scrutiny of legislative adherence and enforcement at a jurisdictional level.

5.0 Findings: Analysis of the RPG and related disclosures of the sample

In this section, we present our analysis of the RPG of 50 selected companies and summarise these findings in Table 3 and Figures 2-11. We then elaborate our analysis Sample7 companies, as summarised in Table 4.

Company level compliance

Our findings show that our sample of selected companies, incorporated in the UK, have complied with the statutory obligation to file a RPG; companies that are not UK incorporated but listed on the LSE have also complied with the Regulations. As previously shown (Table 1), companies used different reporting formats; most companies reported using the prescribed XML schema that outputs to CSV spreadsheets with few or no additional disclosures, whereas some higher profile companies produced an additional long PDF that includes tables explaining the different payments to governments and detailed information on how the Regulations have been interpreted, infographics and data tables, details of economic contributions not captured by the Regulations and in one case (BP) a 'limited assurance' report.

Mandatory reporting requirements under the Regulations are replicated in panels A-D of Table 3. Panel A shows the extent of compliance with Section 5:1(a)-(d) of the Regulations. All 50 companies in our sample reported the country of the government to which payments are made. Of the sample, 40 (80%) companies disclose the governments to which payments are made, the amount paid to each government (40 companies, 80%) and the total amount per type of payment made to each government (39 companies, 78%). Panel A also shows that 36 (72%) and 38 (76%) companies disclosed the total amount of payment made for each project and the total amount per type of payment made for each project, respectively.

It is important to note that, where there is no disclosure, it is unclear as to whether this indicated non-compliance with the regulations or simply that

the disclosure is not relevant to the reporting entity. In a preliminary analysis of 23 RPG (Appendix 3), several companies did declare that they had 'nothing to disclose' regarding certain payment types, which indicates emergent good practice. This point informs our recommendations.

Panel B of Table 1 shows the extent of disclosure in relation to types of payment, evidencing reporting of: taxes levied (46 companies), fees (38) and royalties (31) were the most frequently disclosed types of payments made to governments, followed by infrastructure improvements (22) and production entitlements (16). However, few companies in the sample disclosed information about bonus payments (5) or dividends (2).

The Regulations (s5:5) mandate that "the disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned". Only one company in our sample, BP, specifically referred to reflecting substance and elaborated its reporting obligations in the light of this requirement. This elaboration particularly focused upon joint ventures, stating: 'where BP has made a payment to government, such payments are made in full, whether made in BP's sole capacity as the operator in a joint venture'. Other companies disclosed similarly (if not all) by in effect reporting aspects of substance over form without explicitly referring to it (e.g. Shell elaborate on joint venture arrangements and Rio Tinto on payments to tax havens and related matters). The observations inform our recommendations.

Finally, the Regulations (s5:6) mandate that where payments in-kind are made, the reporting entity must state their value and, where applicable, their volume, with supporting information about how the value has been calculated. Six companies submitting their RPG by using the XML schema complied with this requirement (Table 3, Panel D).

Table 3: Disclosure of Payments to Governments for 50 companies

Panel A: Content of Reports					
Mandatory Requirement	**Regs**	**Disclosed**	**Not**	**Partial**	**Figure**
Government to which payments made	S5:1 (a)	40	10		Fig. 2
The country of the government to which payments are made	S5:1 (a)	50			NS
Total amount paid to each government	S5:1 (b)	40		10	Fig. 3
Total amount per type of payment made to each government	S5:1 (c)	39		11	Fig. 4
Total amount of payment made for each project	S5:1 (d)	36	6	8	Fig. 5
Total amount per type of payment made for each project	S5:1 (d)	38	6	6	Fig. 6
Panel B: Types of payments					
Mandatory Requirement	**Regs**	**Disclosed**	**Not**	**Partial**	**Figure**
Production entitlements	S2	16	34		Fig. 7
Taxes levied	S2	46	4		NS
Royalties	S2	31	18	1*	Fig. 8
Dividends	S2	2	48		Fig. 9
Bonuses	S2	5	45		Fig. 10
Fees	S2	38	11	1**	Fig. 11
Infrastructure improvements	S2	22	28		NS
Panel C: Substance over form - The Regulations, Section 5(5)					
Of the 41 companies presenting a PDF file, one company (BP) refers to the term substance over form in the report that is available online. Of the 29 companies presenting a CSV spreadsheet, none of the companies refer to the term substance over form.					
Panel D: Payments in kind - The Regulations, Section 5(6)					
Of the 41 companies presenting PDF files: 6 companies report that they have made in-kind payments, while 3 more companies include information on in-kind payments without clearly identifying that they have made such payments; One company claims that payments were in cash, then discloses the following under production entitlements: *'This includes non-cash royalties and amounts paid in barrels of oil or gas out of the company's working interest share of production in a licence. The figures disclosed are produced on an entitlement basis rather than a liftings basis and are valued at the actual price used to determine entitlement.* Of the 6 companies, 4 state the value of payment in-kind, volume and an explanation of how the value is determined, 1 states the value of the payment only and 1 states how the value of in-kind payment is determined only. Of the 29 companies presenting CSV spreadsheets, despite the fact that only one refers to payments in kind, 6 of them state the value of payments in kind, their volume and provide an explanation of how this value was determined.					

Note: 'Disclosed' means the company disclosed the relevant activity per the Regulations; 'Not'' means the company has stated that the activity or payment type per the Regulations is not relevant to the company or the company does not disclose any information about the relevant activity or payment type. 'Figure' refers to the relevant figure in this report. NS = not shown

* A company reports zero in the report prepared, but does not mention it did not pay any as it does when it comes to other types of payments

**A company disclosed that payments were made but were not above the threshold, and therefore were not reported.

Quantitative analysis

Compliance with the Regulations, Section 5:1 (a)-(d)

All companies in our sample disclosed the country of the government to which payments. As can be seen from Figure 2, 80% of the companies report the government to which each payment is made.

Figure 2: The government to which each payment is made

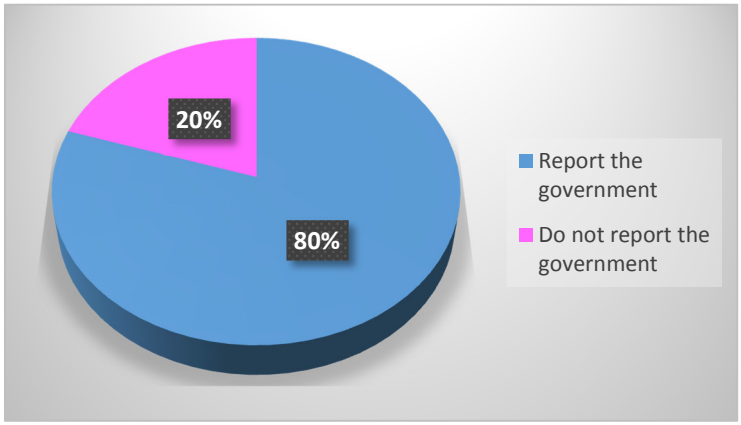
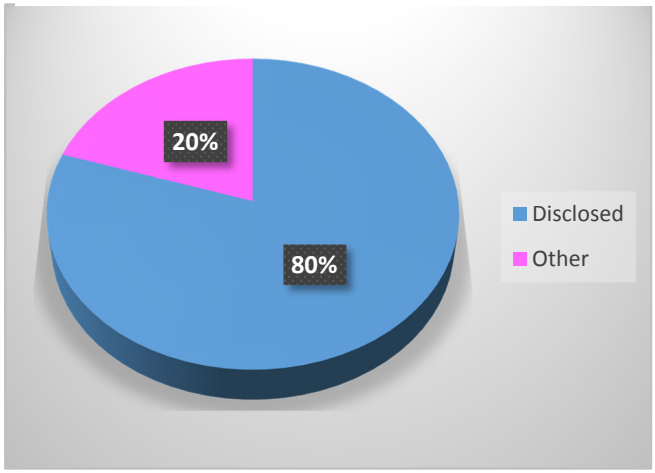


Figure 3: Total amount of payments made to each government



The 10 (20%) companies which did not disclose the total amount of payments made to each government were the same as the 10 companies in Figure 1.

Figure 4: Total amount per type of payment made to each government

Eleven companies (22%) did not fully disclose, of which: 8 disclosed the total but did not specify the government; 2 provided a breakdown of the payments but do not provide the total; and 1 company that did not specify the government but did provide a breakdown but not a total amount.

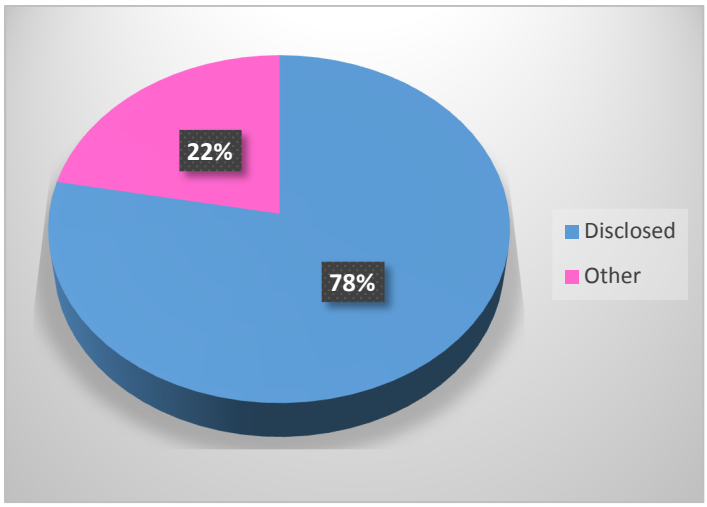
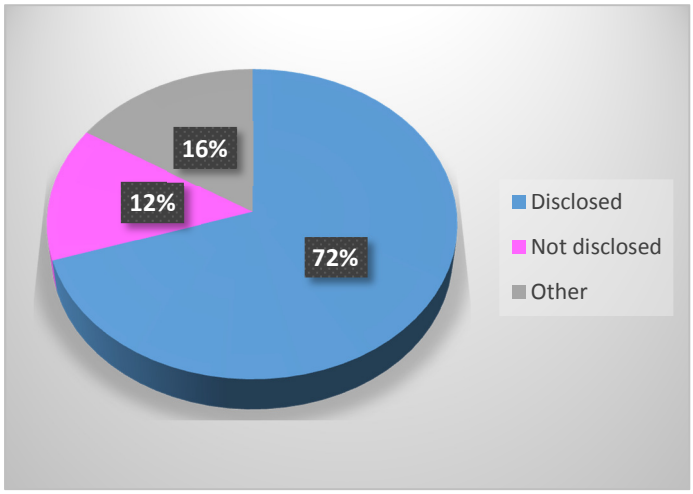


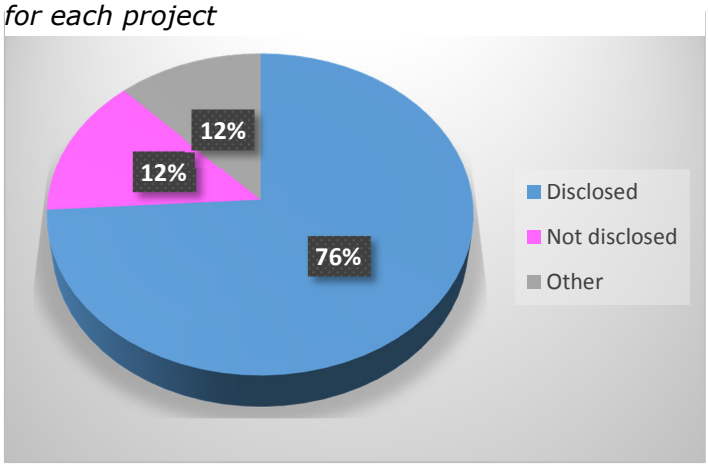
Figure 5: Total amount of payments made for each project



Six of the companies (12%) do not provide any project level information, while 8 (16%) of them fall under 'other' category which includes a company that provides mine names instead of project names (although the law permits companies to report at an entity level, when a project level cannot be achieved), and 7 companies that do provide a breakdown but do not provide a total.

The 12% of companies that do not provide any information that relates to the total amount per type of payments made for each project, includes the same companies that did not report any project related payments (Figure 5).

Figure 6: Total amount per type of payment made for each project



Of the 50 companies analysed, 46 (92%) paid some form of taxes levied (Table 3, Panel B).

The results differ when it comes to the other types of payments that companies are required to disclose (Figures 7 to 11).

Figure 7: Production entitlements payment

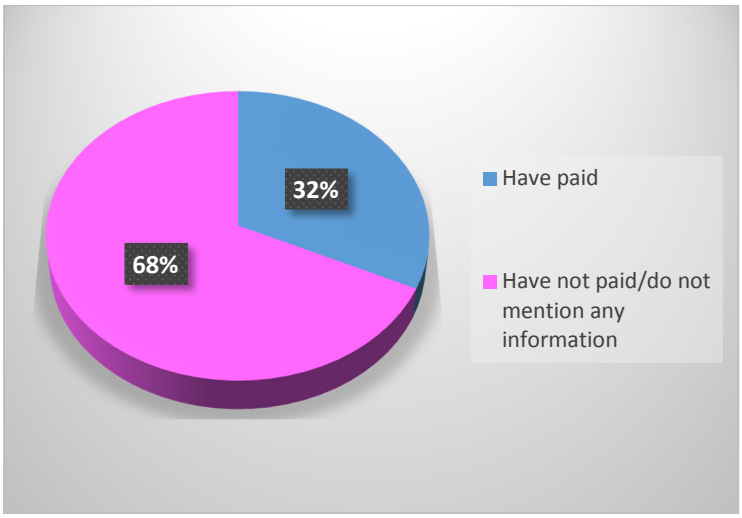
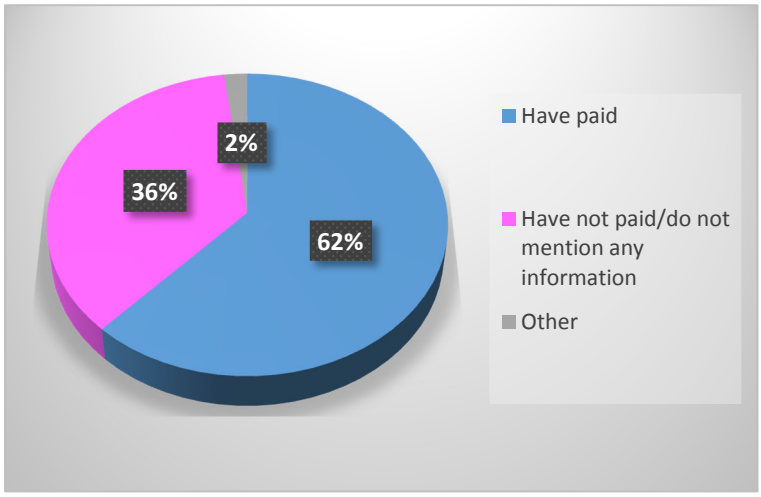


Figure 8: Royalties payment



The 2% in Figure 8, represents a company that reports zero in the report prepared, but does not mention it did not pay any as it does when it comes to other types of payments.

Figure 9: Bonuses payment

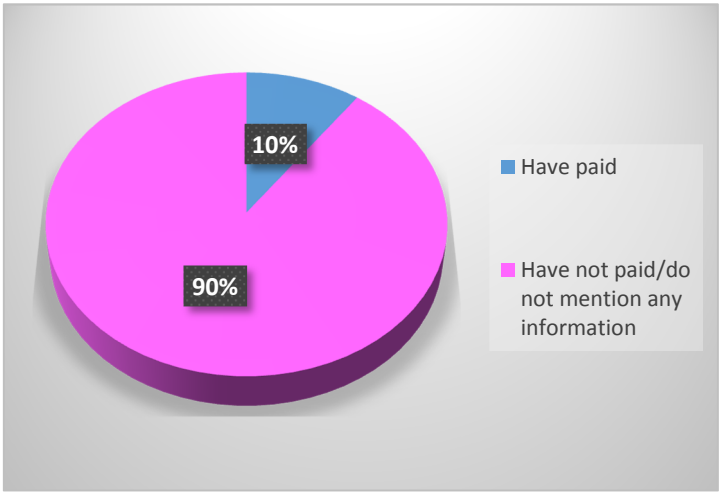
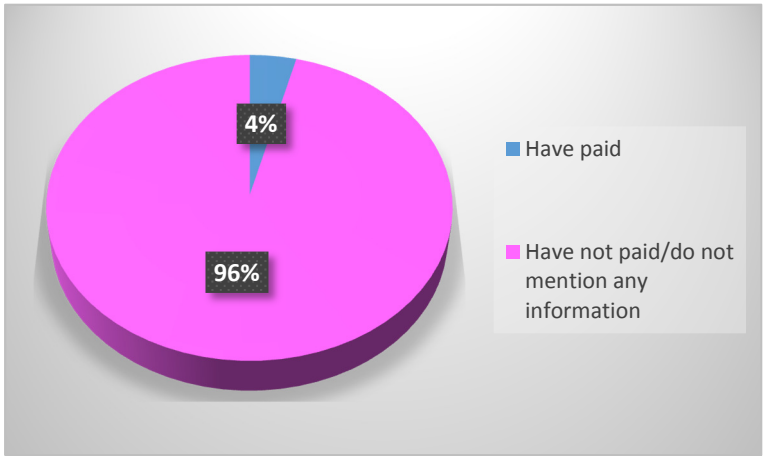


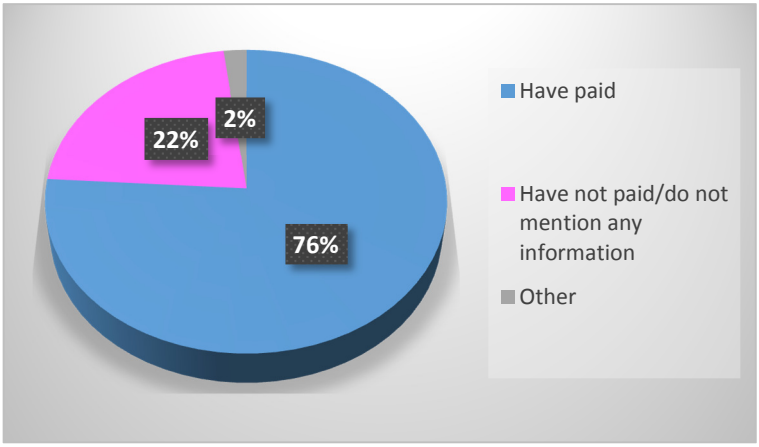
Figure 10: Dividends payment



Out of the 2 companies that disclose dividends (representing 4% of the sample in Figure 10), one of them mentions that these dividends are aggregated with other items.

When it comes to fees payments, one company (2%) did disclose that payments were made but were not above the threshold, and therefore were not reported.

Figure 11: Fees payment



Disclosure analysis

In depth analysis performed on the RPG in connection with company accounts and CSR reports highlighted several areas of interest. Table 4 provides a summary of findings which are expanded upon in subsequent sections and which inform the recommendations of the report.

Table 4 – Other disclosures

	Yes	No
IFRS 8 – Geographical disclosures provided	7	0
IFRS 8 – Geographical disclosures of taxation charge provided	1	6
Mineral properties note identifying aggregated areas where extraction takes place	6	1
Mineral properties note identifying all individual countries where extraction takes place	4	3
Countries in investment note/strategic review all represented in the RPG	1	6
Taxation note – reconciled to RPG	1	6
Disclosure of any provisions relating specifically to uncertain tax positions	3	4

Joint operations

A review of the RPG in conjunction with the accounts, with particular attention on joint operation notes, highlighted that this is an opaque area. Some groups disclosed in supplementary notes to their RPG the JV's which are excluded from the scope of their chapter 10 reporting requirements however where there was no such disclosure it was not possible to discern which JV partnerships in which territories may be excluded from the reports.

The following excerpts from Royal Dutch Shell Plc's 2015 RPG[13] is illustrative:

"*This report includes payments made by Royal Dutch Shell Plc and its subsidiary undertakings (Shell). Payments made by entities over which Shell has joint control are excluded from this report*"

"*When Shell makes a payment directly to a government arising from a project, regardless of whether Shell is the operator, the full amount paid is disclosed even where Shell as the operator is proportionally reimbursed by its non-operating venture partners through a partner billing process (cash-call).*

When a national oil company is the operator of a project to whom Shell makes a reportable payment which is distinguishable in the cash-call, it is included in this Report."

This explanation of Shell's interpretation of the Regulations, highlights the potential for payments to go unreported.

From the above, where Shell does not have control over an entity, reliance is on the party with control to report payments. This in turn relies on that party being within the regulations, which is uncertain indeed from the limited information contained in the accounts and from the RPG it is not always possible to discern who the operating partners of unreported JV's are.

Shell reports its payments to government made as an operator, regardless of reimbursement, thus eliminating this issue for non-controlling parties with joint operatorship in Shell operated assets. If all operators were to undertake to provide this detail this may capture the majority of payments made. However, this relies on non-operators not reporting payments as to do so would result in some payments being double counted. One way forward suggested here is that the group could be made responsible for checking whether a non-operator reported payments or not to ensure that payments are reported but not double counted.

[13] http://www.shell.com/sustainability/transparency/revenues-for-governments/_jcr_content/par/textimage.stream/1460962925009/43a62e840a312580b7a030a0b6719d720a03afb774d5edf22bc8f30914609748/shell-report-payments-to-governments-2015-18042016.pdf

The final paragraph highlights that payments made to national oil companies are disclosed in the RPG where they can be distinguished in cash calls. This is a positive commitment to disclose such payments however there is an underlying issue, which is that these payments may not be distinguishable and there may be certain payments which arguably could be payments to governments but may not fall within the definition of such within the regulations.

To summarise, this is an area of significant complexity. No evidence was found of companies altering structures to avoid disclosing payments however the issues highlighted from Shell's RPG were common across the sample. Furthermore, the lack of clarity over JV reporting in general and specifically classification of payments to national resource companies was highlighted as an issue by the preparer and the auditor interviewed.

In this area, as we note below, it is recommended that some clarifying guidance should be issued by BEIS in order to ensure consistency.

Disparity from accounts

When analysing the RPG, it became quickly apparent that for the most part, and certainly where companies had international operations, there was little or no possibility of reconciling the payments reported back to figures in the accounts for the same period. The figures do not reconcile for several reasons:

- The RPG figures are prepared on a cash paid basis, whereas the tax charge and any other identifiable tax figures in the accounts are reported on an accruals basis (the "accruals difference").
- The RPG figures include production levies, tariff payments, royalties and production based taxes. Most of these are unlikely to appear in the tax charge and may not be separately disclosed anywhere in the accounts.
- The tax charge in the accounts will include liabilities incurred in relation to activities which fall out with the scope of the Regulations e.g. "downstream" activities such as storage, transportation, refinement and sale.

The first point is possible to overcome, to an extent, by referring to the cash flow statement, or where no cash flow statement is prepared by comparing the closing tax creditor to the opening creditor adjusted for the current year movement. This gives an approximation of the tax paid but is not exact as the movement may include accounting adjustments and the result may still be compromised by the inclusion of tax payments not within the scope of the Regulations.

The Regulations, were not meant to be a supplementary appendage of the Accounts and so this lack of consistency is not surprising. Nor is it a reflection on the quality of reports provided by companies as the companies analysed, for the most part, have complied at least with the minimum obligations of the Regulations.

The reason the lack of cohesion is an issue is that it potentially impairs the reliability and comparability of the information. As stated previously the RPG

provide information unavailable elsewhere, which despite being a step forward does leave users unable to verify the information against other publicly available sources. The obvious source of publicly available information for users to turn to for corroboration in this scenario is the accounts, which have the benefit of being independently audited, however the differences noted above make reconciliation extremely difficult and so will provide little assurance as to the accuracy of the RPG and furthermore may cause confusion if users are not familiar with the difference in basis of preparation between the two reports, compromising the comparability of the information.

Rio Tinto, in their 2015 RPG, produced a table of reconciliation showing the main differences between RPG figures and the Group's accounts. The reconciliation adjusts for tax charges arising from equity accounted investments, deferred tax and the accruals difference. This reconciliation is a useful step in allowing users to contextualise the tax paid by the company within the wider company performance and arguably gives users some assurance as to the accuracy of the RPG figures by being able to reconcile them back to audited accounts.

No other detailed reports, reviewed as part of this project, provided a detailed reconciliation to accounts. It is however felt that the addition of this type of reconciliation would be of benefit to users for the reasons highlighted above. It is recommended that the requirement to produce a reconciliation should be incorporated into the legislation and that this is something which should be highlighted as part of the BEIS consultation.

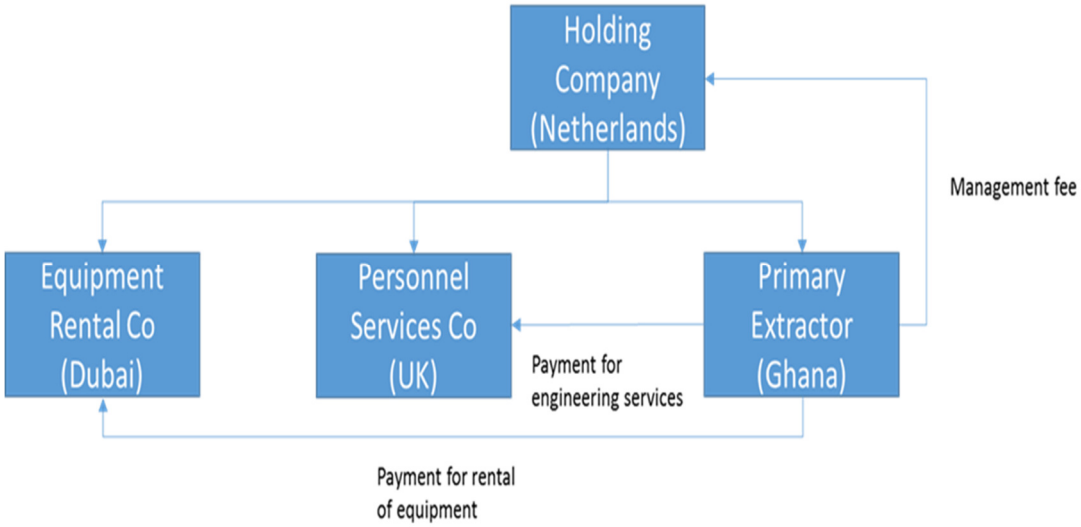
The question of whether a reconciliation would be a useful addition to the RPGs and whether preparing reconciliations would be an achievable exercise for preparers was raised with our interviewees. Concern was expressed by the auditor, the preparer and the representatives of industry that additional administration and the complexity of some fiscal rules, especially around production sharing, would make this a burdensome exercise for preparers. These concerns would have to be balanced against the benefit of the additional clarity provided by reconciliations and so it is suggested that any pro forma reconciliation should have scope to be amended to take account of individual circumstances as long as it addresses the three main reconciling differences highlighted above e.g. the accruals difference, items not expressly disclosed in the accounts and tax charges arising from activities not captured under the Regulations.

Integrated business models

It was noted when reviewing the seven companies which produced detailed reports to accompany the RPG that several entities included in the investment note in the accounts of some of these companies, whose primary activity was noted as 'operations', did not appear to be represented in the RPG or at least their country of establishment was not a jurisdiction for which payments were reported. It may be that no reportable payments were made in these jurisdictions however the lack of disclosure may also be a result of these operations not falling within the scope of the legislation.

The legislation requires companies carrying out extractive activities to report payments and extractive activities are defined by the legislation as follows: '…any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials'. The definition is applied to individual 'concerns' e.g. on a company by company basis. As the definition requires a companies' activities to directly relate to primary extraction of minerals in order to fall within the scope of Chapter 10 this means that companies carrying out supporting activities 'downstream' of the primary extraction ('secondary activities') are excluded from the RPG reporting requirements. It is understood that the regulations are not designed to capture secondary activities however mining and oil gas production are often carried out by fully integrated groups of companies who are able to perform all of the necessary steps in the process of mineral exploitation, from exploration and prospecting to eventual wholesale or retail of the product. The integrated approach provides groups with the opportunity to shift profits through the value chain via intra-group transactions as illustrated in Figure 1.

Figure 1



The shifting of profits will be checked to a degree by transfer pricing rules, however where these are ineffective or not strictly enforced the potential for profit shifting will exist. Primary extractive activities are territorially bound and are often subject to higher rates of taxation than secondary activities. Groups therefore have an incentive to shift profits down the production chain in order to achieve a tax arbitrage.

The definition of extractive industries in Chapter 10 does not currently take account of the integrated business models employed by a number of the groups involved in mineral production. The regulations adopt a form over substance approach which treats companies within a group as separate commercial enterprises. This ignores the reality which is that companies within a group form part of one coherent commercial enterprise. By employing profit shifting

techniques designed to achieve a tax arbitrage groups operating in extractive sectors will also potentially present a distorted picture of the payments they make to governments under the current RPG regime. This is because taxes levied on profits earned by secondary service providers through intra-group receipts will not be reported. This means users of RPG reports will not be able to discern for individual projects or operations in a specific territory the full amount of tax paid and to which government the tax was paid. The above suggests the need for a modification of the law, considered in recommendations (*subter*).

6.0 Conclusions and recommendations

Summary

The research suggests a number of recommendations that might inform policy input, namely in terms of the review of the legislation. These recommendations seek to be reflective of the findings, including consideration of current contextual developments.

Recommendations

Legislation and guidance

(1) The first striking feature of the legislation is the lack of an audit requirement. Of the various reasons that we have heard for the absence of proper audit and assurance in the law, the most substantive are cost related. This stems in part from the complexity of some aspects of the requirements, more especially in terms of instances of project level reporting. Some of the required information here, to meet some of this particular requirement at least, may not be readily available internally. If an audit or greater assurance is to be asked for, to improve the legislation, then a number of things might be considered together: (a) Is there scope for simplifying certain aspects of current provisions? Might even some of the requirements be taken out in order to increase assurance on key information such as the amounts of payments to governments by country at central and local government level? (b) Are all provisions yielding information that is equally valuable? Can this be clarified? Can evidence of usage, actual and potential, be evidenced and clarified? (c) Would 'limited assurance' be better than no assurance requirement at all? We note here that some companies have already given limited assurance even in the absence of a formal legal requirement. We have formed the strong opinion that limited assurance is much more likely to be found acceptable by the legislators than a full audit (based on expressed industry concerns). Some commentators made the point that under current rules no feedback is received after the RPG is submitted.

(2) Initially we were of the view that the size of payments criteria should be dropped as it may make evasion more feasible. While the latter point has some substance (and perhaps some limited provision might apply across

the board), we found that many commentators saw the size criterion as being low. On reflection, given that it is on the face of it low in relative terms, companies significantly trying to disaggregate payments to take advantage of it would look particularly bad if they were at the same time making significant profits or had significant turnover. Perhaps some clause making disaggregation in this context difficult, linked to limited assurance provisions, might be appropriate.

(3) As required, the notion of substantially interconnected should be clarified. The UK law should reflect the clarified meaning. The clarified meaning of the law should seek to ensure that practices that companies might be tempted to follow currently should be explicitly outlawed.

(4) Companies falling under UK law must disclose in-scope payments made on their behalf (by operators or other agents). When an in-scope payment is made by an operator on behalf of participants in a joint venture, participating companies in the joint venture should disclose at least their share of the relevant payment. Companies should have regard to the underlying liability for the payment under local law.

(5) In respect of payments to governments made through joint venture arrangements, the suggestion that they cannot always be distinguished from other payments made to participators is arguably an unreasonable one. Companies ought to be expected to distinguish these payments, where at all possible. A revision of the law or further guidance on this point might make the position explicitly clear.

(6) In the absence of an audit or limited assurance, another feature attendant to the current legislation is of particular concern. How does anyone question the reports? One might consider asking for a clear procedure for challenging non-compliance that does not depend on the permission of the relevant Secretary of State or Director of Public Prosecutions or even the Company Registrar. If there was an audit or limited assurance requirement, then the failure to get clean reports might trigger investigations.

(7) We have indicated that reconciliation with the company accounts might be a useful requirement, especially where no assurance is given in respect of the RPG, given that the company accounts are audited. Consideration should again be given to how company accounts might also be amended to increase their usefulness to civil society. Progress with accounting standards has not been as good as with the law but there is a good rationale in relation to segment reporting that should continue to be pushed. The same rationale applies in the context of stock exchange listing requirements. The information reported in the RPG purports to assist civil society in holding governments to account in terms of the economic contribution they make to resource rich countries. Furthermore, the information should assist investors in judging the merits of potential investments in terms of compliance with applicable tax laws and transparency displayed by companies. It is useful in relation to risk assessment. The RPG provide a level of detail not available in the accounts or elsewhere in company disclosure and to this extent they provide users with information which they would not otherwise have any access to.

(8) It is recommended that the definition of extractive industries in Chapter 10 be amended to take account of the integrated business models employed

by a number of operating enterprises operating in the sector. This could be achieved through widening the scope of the definition of extractives as follows: '…any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials or activities connected therewith carried out by an associated enterprise'.

Context

(9) One matter to consider is how various initiatives such as EITI and BEPS Action 13 can be more cohesively linked in order to facilitate better and more efficient transparency reporting. We have indicated how the yielding of more insights into the reasonableness of tax payments would enhance provisions. At the same time, we are of the view that the RPG in itself is a valuable provider of information to civil society and to the investor community. Of course, we need to be concerned about levelling down standards rather than levelling up in this context. The deficiency of information in relation to Action 13 templates might be highlighted in the consultation as a limiting factor in the usability of the RPG. This may potentially be addressed by publication of the type of country-by-country reporting referred to earlier, which will be mandatory for groups established in the UK for accounting periods beginning on or after 1 January 2016 but which are currently only required to be disclosed to HMRC. Further information which may be useful in assessing the legislative adherence of groups and the application of the law by governments could be the number of open enquiries, late filing penalties and scheduled judicial proceedings relating to taxation reported by groups for each jurisdiction in which they operate. These pieces of information could form a series of metrics which users could compare on a group by group basis; in order to assess both the compliance of groups with local laws and governments' enforcement of the laws. Perhaps addressing how the various initiatives might work together to produce a better transparency regime is helpful input.

(10) There are a number of insights that might inform negotiations. And in this regard it is appreciated that in contexts of consultation and negotiation there are differing interests involved in respect of this area of legislation. Nevertheless, even in the current global context there may be some common ground in terms of an interest in common standards, for instance, and a basic acceptance of the need to act on the underlying issue. This may facilitate keeping enacted legislation on the statute books and improving it, which should be at the forefront of the minds of negotiators. That companies have produced reports is a significant step forward. And there ought to be a recognition that it is too early to give a final assessment on the reporting practice. There are a number of positive indicators here concerning future prospects for the law. One positive strategy is to evidence usage of the reports that has been helpful, even while asking for improvements. PWYP has built up a number of effective counters to many arguments put by those seeking to reduce the costs of the law to them and these will no doubt be needed once more. One suggestion last time was that there might be a 'primary listing' exemption in regard to the provisions

of the Transparency Directive. No doubt such arguments will be forthcoming again. But the experience of the legislation so far has not been as dramatically negative, on the face of it, as some of the comments suggested it would be.

Operation

(11) Some commentators suggested that software was less than user friendly and required specialist IT input. A systems review in conjunction with preparers may help to make the process of filing less onerous to those required to report.

Advocacy

(12) PWYP and others are encouraged to indicate that it has found some of the information useful and illustrate this. Any evidence of usefulness should be provided. This will emphasize that there is something to hold on to and build upon. This is important for all aspects of the law that PWYP are concerned to retain. It is helpful to also indicate positive potential usage as well as evidence actual usage. Commentators are expressing concern about lack of usage, which needs to be countered.

Best practice

(13) The more useful RPG were those which contained explanations on how terms within The Regulations had been interpreted, for example definitions of payment types within the specific company context. This information gives users a better insight into how the reports have been prepared and the nature of companies' contributions.

(14) We initially felt that the reporting entity should be required to make clear in their RPG that they have 'nothing to disclose' to enable discernment between this situation and non-compliance. Reflection on current law relating to disclosure in accounting, however, suggests that this would be an unusual provision and hence should not be a major ask.

Further work to do (in progress)

Following the publication of this report we are concerned to shift our focus to the EU level aiming to build an evidence based case for the continuation and development of the law.

A brief note on the authors

Eleni Chatzivgeri, Lynsie Chew, Louise Crawford, Martyn Gordon and Jim Haslam are UK accounting academics whose research interests include the interface of accounting and wider regulatory forces and issues in enhancing accounting's social relevance. The team have a wide range of research skills based on their collective experience. Eleni is based at the University of Westminster and Lynsie at University College London. Louise and Martyn are based at Robert Gordon University and Jim Haslam is at the University of Sheffield. Jim and Louise are leading the project as academics with long experience in the issues of concern, including having authored a number of papers in this area.

Appendices

Appendix 1 – Company sample

Appendix 1: Extractive Company Sample*			
Company	**Country of Incorporation**	**Files available**	**Files used for the descriptive analysis**
Panel A: Oil and Gas Companies			
BG GROUP*	GB	CSV file	CSV file
BP	GB	CSV file and long Pdf	CSV file
CADOGAN PETROLEUM	GB	CSV file and short Pdf	CSV file
CAIRN ENERGY PLC	GB	CSV file and short Pdf	CSV file
ENDEAVOUR ENERGY UK LTD	GB	CSV file	CSV file
ENQUEST PLC	GB	CSV file and short Pdf	CSV file
GAZPROM NEFT PJSC	RU	Pdf only	Pdf file
GREAT EASTERN ENERGY CORP	IN	Pdf only	Pdf file
GULF KEYSTONE PETROLEUM LTD	BM	Pdf only	Pdf file
JKX OIL & GAS	GB	CSV file	CSV file
KAZMUNAIGAS EXPLORATION PRODUCTION	KZ	Pdf only	Pdf file
LUKOIL PJSC	RU	Pdf only	Pdf file
NEXEN*	GB	CSV file	CSV file
NOSTRUM OIL & GAS PLC	GB	CSV file and short Pdf	CSV file
NOVATEK OAO	RU	Pdf only	Pdf only
OPHIR ENERGY PLC	GB	Pdf only	Pdf file
REPSOL SINOPEC RESOURCES*	GB	CSV file	CSV file
ROSNEFT OIL CO	RU	Long Pdf file	Long Pdf file
ROYAL DUTCH SHELL	GB	CSV file and long Pdf	CSV file
SEPLAT PETROLEUM DEVT CO PLC	NG	Pdf only	Pdf file
SOCO INTERNATIONAL	GB	CSV file and short Pdf	CSV file
TATNEFT PJSC	RU	Pdf only	Pdf file
TULLOW OIL PLC	GB	CSV file and short Pdf	CSV file

Panel B: Mining			
ACACIA MINING PLC	GB	CSV file and short Pdf	CSV file
ANGLO AMERICAN	GB	CSV file	CSV file
ANGLO ASIAN	GB	Pdf only	Pdf file
ANTOFAGASTA	GB	CSV file and short Pdf	CSV file
AVOCET MINING	GB	CSV file and short Pdf	CSV file
BHP BILLITON PLC	GB	CSV file and long Pdf	CSV file
CENTAMIN PLC	JE	Pdf only	Pdf file
FRESNILLO PLC	GB	CSV file and short Pdf	CSV file
GEM DIAMONDS LTD	VG	Pdf only	Pdf file
GLENCORE PLC	JE	CSV file and long Pdf	CSV file
HOCHSCHILD MINING PLC	GB	CSV file	CSV file
KAZ MINERALS PLC	GB	CSV file and short Pdf	CSV file
NORD GOLD SE	NL	CSV file and short Pdf	CSV file
PETROPAVLOVSK PLC	GB	Pdf only	Pdf file
POLYMETAL INTL PLC	JE	Pdf only	Pdf file
RIO TINTO	GB	CSV file and long Pdf	CSV file
Panel C: Other			
CENTRICA PLC	GB	CSV file and short Pdf	CSV file
CHELIABINSK ELEKTROLIT ZINK PLANT	RU	Pdf only	Pdf file
EVRAZ PLC	GB	CSV file and long Pdf	CSV file
FERREXPO PLC	GB	CSV file	CSV file
GENEL ENERGY PLC	JE	Pdf only	Pdf file
HUNTING	GB	Pdf only	Pdf file
JARDINE MATHESON HLDGS	BM	Pdf only	Pdf file
MONDI PLC	GB	CSV file and short Pdf	CSV file
NORSK HYDRO ASA	NO	Pdf only	Pdf file
NOVOLIPETSK IRON AND STEEL CORP	RU	Pdf only	Pdf file
PETROFAC LTD	JE	Pdf only	Pdf file
*Company not listed on LSE but included in the sample as it did fill in a report in the Companies House, at the time data was collected			

Appendix 2 – Disclosure checklist

Mandatory Requirements - Report on Payments to Governments Regulations 2014		
Content of Report, for each financial year:		
Section		Disclosed or not
5(1)	***Entity-level payments***	
(a)	The government to which each payment is made	
	The country of that government[14]	
(b)	Total amount of payments made to each government	
(c)	Total amount per type of payment made to each government	
	Project-level payments	
(d)	Total amount of payments made for each project	
(d)	Total amount per type of payment made for each project	
	Types of payment to be disclosed	
2(1)	Production entitlements	
	Taxes levied on income, production of profits[15]	
	Royalties	
	Dividends (other than to government shareholders)	
	Signature, discovery and production bonuses	
	Fees: licence, rental entry, other and concessions	
	Infrastructure improvements	
	Other mandates	
5(3)	Only payment all above £86,000	
5(4, 5)	Payments reflect substance over form (payment, activity and project)	
5(6)	Payments in-kind • State value of each such payment • Volume of such payments • Explanation of how value determined	

Voluntary activities/disclosures		
5(3)	Payments less than £86,000	
2(1)	Project definition/operational activities	
10(1)	Exempted subsidiaries (size; non UK parent)	
11(1)	Exempted subsidiaries (information availability)	
12	Exempted duty to report - equivalence	

[14] This requirement is not included in EU Accounting Directive, Chapter 10

[15] Excludes consumption taxes (VAT, personal income taxes or sales taxed)

Appendix 3 - Analysis of 23 companies' payments to governments

Mandatory Requirement	Have paid	Not paid any	Not mentioned	Aggregated with other items
Government to which payments made	19		4	
Total amount paid to each government	21		2	
Project level payments	17		6	
Production entitlements	8	12	3	
Taxes levied	22		1	
Royalties	15	5	3	
Dividends	1	12	10	
Bonuses	3	13	7	
Fees	19	1	1	2
Infrastructure improvements	12	8	2	1
Substance over form	Only one company used the term 'Substance', and detailed how this had been interpreted in line with JV payments to an operator (BP)			
Payments in-kind	Two companies state value, volume and explanation (BP and Royal Dutch Shell) One company gives explanation but no value or volume (Glencore)			