

Update on Obligation to Report on Payments to Governments

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As we have reported previously, the European regulatory drive to make businesses more transparent continues unabated. In October 2014 we reported [here](#) about the introduction of the [UK Reports on Payments to Governments Regulations 2014](#) (implementing chapter 10 of EU Accounting Directive 2013/34). These rules came into force on 1 December 2014. Industry guidance has also been proposed, which awaits finalisation. These rules will increase the compliance burden for many companies doing business in the UK.

What do the new rules do?

These rules aim not only at increasing corporate transparency but also at combatting corruption, allowing for the naming and shaming of countries that fail to use concession payments to benefit their local populations.

In short the rules affect the directors of:

1. large companies (as defined by various balance-sheet, turnover and/or employee number criteria under the rules);
2. public interest entity companies (which include listed companies); and,
3. companies in the extractive and logging industries (oil, mining, quarrying, and, forestry).

They are required to electronically submit a report to Companies House in the UK on any payments (including taxes, licences, royalties and dividends) over UK £ 86,000 made to foreign governments in countries where those companies do business.

When will they apply?

These rules will apply to all companies in relation to their financial year starting on or after 1 January 2015. There are some minor exceptions.

Directors of companies who are required to report must deliver the report to the UK Registrar of Companies within 11 months after the end of the company's financial year in question. The Registrar also has powers to enforce the rules and compel companies to comply with the rules where the Registrar believes that a company has failed to deliver a report - failure to comply with the Registrar's requirements may result in a criminal fine.

What are the penalties?

It is also a criminal offence to deliver to the Registrar a misleading, false or deceptive document or statement for the purposes of the rules. The offence is punishable by unlimited fines, or, two years' maximum imprisonment (at the higher Crown Court level).

Whether exposure of the failure of countries to use concession payments to benefit their local populations will lead to action in those countries to hold the individuals responsible to account (including the criminal prosecution for corruption) remains to be seen. There is also the possibility of so-called 'carbon copy prosecution' in other countries following a UK conviction.

What will all this cost?

The rules impose a major compliance commitment. In terms of costs, the [UK government's official 2014 impact assessment](#) of the rules on UK companies estimated that "transition costs are £36.7m due to time value of money considerations and ongoing costs are £12.4m per annum".

Industry draft guidance

The oil, gas, mining and metals industry has prepared draft [industry guidance on the rules](#) which was published at the end of that month. This draft guidance was prepared in line with the UK government response to its consultation on the reporting payments to governments issue. Industry has asked the UK government for its views on the draft to ensure that their interpretation meets the requirements of both the EU Accounting Directive and UK regulations along with seeking views on whether the guidance is clear and easy to understand. The consultation on the draft industry guidance is now closed and the UK Department for Business, Innovation and Skills states that it "[will consider the guidance further once the next draft is available](#)".

Conclusions

The 5 November 2015 draft guidance (which contains gaps) seeks to answer what it sees as the following key questions:

- Which entities are under an obligation to prepare and deliver a report?
- Does every entity have to prepare a report or can a consolidated report be prepared for a group?
- Are any entities exempted from preparing reports under the UK Regulations?
- What are the reporting requirements for entities that are subject to equivalent disclosure regimes?
- Do the reports only cover payments made by the entities that have to prepare reports or do the reports cover payments made by other group entities?
- Which business activities are within the scope of the UK Regulations?
- Which types of payment have to be included in the report?
- Who has the obligation to include payment information in a report in situations where a payment is made on behalf of multiple parties?
- Which government entities that receive payments have to be covered in the reports?
- How should payments be attributed to projects?
- When and how should reports be delivered?

Once the draft guidance has been finalised we will examine the main points that come out of the answers to these questions in a future blog so watch this space!

Needless to say, whatever the final version of the guidance states, companies will need to have in place policies and procedures to meet the requirements of the rules. Most immediately companies with a December 31 year-end will have to produce their first report for the period 1 January-31 December 2015 in 2016 in order to meet the first deadline that will occur under the rules. Whilst this may seem some time away companies will have to invest time and effort in systems and processes to collect raw data now to be able to comply with next year's deadline.

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