

# CBCR

## Analysis and comparison

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### Highlights

- 1. Holistic approach:** CBCR should not be only a matter of taxation but also of worker right, environment, corruption, money laundering, etc.;
- 2. Software:** The CBCR should be provided through a software for all the companies and for all the countries;
- 3. Governments' involvement:** The government should strength public institutions and find the coordination at international level with other countries to back the CBCR.

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## **1. Background**

The objective of Country by Country Reporting (CBCR) is to foster a sustainable development. It was first formulated in the contest of Extractive Industries Transparency Initiative (EITI). That initiative was in response of the resource curse. It was believed that more transparency in the natural resource management could be translated in a real chance to boost the development process in natural resource rich countries. That measure of transparency consists in the publication from both multinational companies and governments, of the revenues paid for the use of natural resources. For the civil society, that publication has a double function: it could see how much money the companies pay in tax, bonuses, licenses, etc. and how the government uses that money.

That happened in the early 2000s, however it was only after the financial crisis that the matter of how much the multinational companies were paying in taxes reached the public attention as well as the accountability of the governments. During the years of crisis, rich economies experimented a lowering in their revenues. The reaction of the governments has been an increase in taxes and public debt and, at the same time, heavy austerity measures. That context has raised questions about the fairness of the tax burden: companies were paying less than employees. Among companies, some multinationals were paying very little in taxes.


So, in those years, the European Commission (2010) and United States (2012) have begun to speak about Country By Country Reporting. However, in their proposals, they confined this report only for companies in the extractive sector. On the contrary, the OECD (2014) in the Actions of Base Erosion and Profit Shifting (BEPS) provided a draft of CBCR valid for all sectors, although applicable only to large corporations (entities with more than 750m on revenue).

In conclusion, it is likely that in the short term, the CBCR could increase tax revenues and make a good impression on the electorate, but the real question is whether, in the long term, CBCR could promote sustainable development.

## **2. Country By Country Reporting: Definition and characteristics**

### **2.1 Definition**

What do we refer when we talk about CBCR? Is it just a matter of tax paid around the world by multinational companies? In one of the first formulation of CBCR (Murphy, 2009), it has been found the following ten reasons in which CBCR could make a positive contribution: 1. Corporate social responsibility (CSR); 2 .Accountability; 3. Trade; 4. People; 5. Tax; 6. Corruption; 7. Development;



8. Governance; 9. Where you are; 10. Transparency. It is easy to see that CBCR has different uses for one purpose: to support a sustainable development.

Based on that consideration, CBCR should produce a set of accounting and non-accounting information used in different but related matters, for example to fight tax evasion, tax avoidance, money laundering, corruption, etc. and so to contribute to the sustainable development. That information should be provided:

- by the multinational company for all entities of the group in each country where it has a business;
- by the companies involved in the production chain<sup>1</sup> of the product or service and for all their subsidiaries and related entities.

Moreover, we believe, that CBCR should be applied not only to multinationals, but, in a different way, to every company, because every business can provide relevant information to increase transparency and to ease controls.

CBCR should not be a stand-alone initiative. Transparency from multinational companies or companies in general, could contribute to the development process only if it is backed by the same transparency in the public institutions. In other words, non-accountable governments generate an opaque business environment and unfair competition.


## **2.2 Information provided**

As we said, CBCR should provide data for the different uses to better supervise or investigate:

- a) Governance;
- b) Organization;
- c) Corruption;
- d) Human and worker right;
- e) Environment impact;
- f) Money laundering;
- g) Finance (work with) terrorism and opaque organizations;
- h) Investor involved;
- i) Fair trade;


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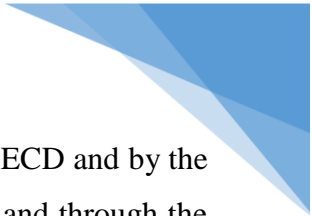
<sup>1</sup> For “production chain” we refer to all the activities necessary to product the product or service.

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- j) Tax avoidance and evasion;
  - k) Accountability;
  - l) Public institutions

Some data should be produced by the companies, others by labour unions. The labour union could provide more reliable information about workers conditions. Moreover, the data should give information about the same company, companies taking part in the production chain and about public institutions. Each company of the group or of the production chain should provide the following information (a source of data should be required):

1. About the subject:
  - a. Name of each company of the group and organization chart of the group;
  - b. Nature of business (For example using the Statistical Classification of Economic Activities in the European Community, commonly referred to as NACE);
  - c. Countries where the multinational company has businesses;
  - d. Stockholders and ultimate beneficial ownership.
2. Accounting:
  - a. Revenue split between related and unrelated parties;
  - b. Revenues from different areas or projects;
  - c. Profit or loss before tax;
  - d. Stated Capital;
  - e. Accumulated earning;
  - f. Turnover.
3. Tax:
  - a. Income tax (paid and accrued);
  - b. Payment to governments
  - c. Royalties;
  - d. Dividends;
  - e. Bonuses;
  - f. Licence fees
  - g. Public subsidies received;
  - h. Tax rulings;
  - i. Pecuniary tax-related penalties;
  - j. List of customer and providers (with the specification of the total amount of the transactions of the fiscal year);

- 
4. Bank account:
    - a. The bank accounts not only of each member of the group and of each companies involved in the production chain, but also of the beneficial ownership. The specification of all transactions should be available to the public authorities. This information is already available in the EU countries;
  5. Environment:
    - a. Information about waste air and water pollution (where applicable sorted by type);
  6. Employment:
    - a. Number of employees;
    - b. Employees working through subcontractors;
    - c. Absence from work;
    - d. Injured or killed workers;
    - e. Security at work;
    - f. Leaves (like maternity leave, etc.);
    - g. Mobbing
    - h. Whistleblowing:
  7. Money laundering and finance of terrorism:
    - a. Relation on risk (See European Directive 849/2015)
  8. Tangible assets:
    - a. Assets which a relevant importance;
    - b. Assets where the activity is carried on.
  9. Intangibles assets:
    - a. Assets which a relevant importance;
    - b. Intra-group operations involving;
  10. Production Chain:
    - a. Name of the companies of the production chain and their subsidiaries;
  11. Transparency/corruption
    - a. The scope is to check the problem that the company has faced because of bad institutions.
  12. Information about public institutions (similar to the “Doing Business” published by the World Bank).
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Most of that information is already required in the proposal of CBCR draft by the OECD and by the European Commission. We think that all that information should be required once and through the same software for all the countries.

### **2.3 Format and publicity of the information**

Multinational companies should produce the information through an online software provided by governments. It should be the same in each country. In that way, companies could already know what and how information they should provide and the public administration could have the information in a homogeneous way and in a workable format. Governments should decide at international level what information publish and in which way (as in the USA proposal of CBCR. You can find more about it in the Annex). This election should be based on the different needs of the potential recipients of that information. Moreover, countries with a poor institution could be easier involved in the process. They will not need to invest resources to ask to each multinational for the CBCR, as it is proposed by the requirements drafted by the OECD. They will use that resource to facilitate and coordinate controls at international level.

### **2.4 Subject receiving the information**

Governments and public administration like tax administration: they need to direct access to the information produced by CBCR to monitor and prevent tax avoidance and tax evasion, money laundering, corruption, unfair competition, etc.

Investors: they should access to some information also in aggregate way to lower their risk. That, it could help companies to have more investors because more transparency and information contribute to lower the risk and to increase investments.

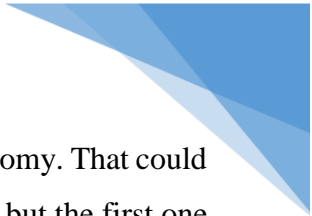
Customers and Civil Society: they could know more about the social responsibility of the company and the product or the services they are buying. At the same time, they could have an objective opinion about the public institutions and the ease to do a sustainable business in their country. That could be important for a democratic state to better understand which institutions improve.

## **3. Consequences: possible scenarios**

### **3.1 Adverse scenario**

We suppose that CBCR should have a positive effect in taxation, worker rights, environment, public institutions, because the companies should pay more attention to that matters. So, for example, with the implementation of the CBCR we hope multinational companies will pay a fair amount in taxes.





However, in that way, they earn less money, but they contribute to a more stable economy. That could mean that at international level there could be two company with the same business, but the first one (a multinational company) has to redact the CBCR and the other one, (a domestic company) operating only in a country not applying the CBCR, could cut cost for example: avoiding paying tax, exploiting workers, destroying the environment, etc.) After some years, the domestic company could have enough money to buy the multinational company. In a nut shell, if the CBCR will not apply at the international level could produce a good impact on development until a foreign owners could change the legislation to increase the profit in a speculation way.

### **3.2 Positive scenario**

The introduction of the CBCR could provide the investors with the information they need to lower volatility; so, it is likely to believe that economy could have more stability. A stability economy could help the company to better plan their business. On the other side, a transparent production chain could give information about clients and suppliers to the company to minimize unfair surprises and to better control the productive cost.

CBCR could contribute to have a holistic approach to different matters like frauds, corruption, environment, workers conditions, etc. that could contribute to reduce the bureaucracy that a company faces and, at the same time, could contribute at the accountability of the governments.

Developing and poor economies could have a help in the implementation of the CBCR.

## **4. Audit and control of the report**

The data should not be subject to any external prior check. However, public administration, like tax revenue agency should provide an ongoing control (like, for example, a cross check). In the investigations taken at international level, countries should have reached an agreement to let the public officials, like the tax inspectors, the possibility to accomplish the inspection with the information coming from another country. Working together, public administrations, like the tax agencies, could fill their gaps in doing an international control.

## **5. Next steps**

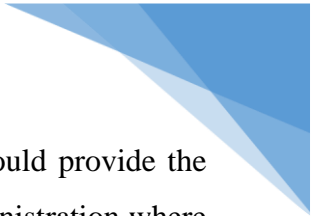
CBCR should be introduced gradually, mainly for two reasons: it needs a better coordination at the international level and it should be better understood by the public institutions and companies. The steps for implementing the CBCR could be the following:

- Find coordination at international level. European Union, United States and Canada are going to implement in a different way the CBCR. Some countries from Africa and South America have been following the EITI standards. The OECD has published a proposal of CBCR. It could be useful find a common path at international level to implement the same prevision of CBCR and make pressure in that matter to other countries like: Russia, China and India. Make sure to introduce a requirement of CBCR in the future trade agreements. That should give stability to the process;
- Set a minimum level of the transparency and accountability for the governments and public institutions at national and at local level in each country joining the agreement;
- Divide companies in different areas (large, medium and small multinational companies, domestic companies and autonomous). Each area should be provided some information about the company and about the companies involved in the production chain of a product or of a service. In other words, it could be useful set a specific CBCR for each area.
- Make sure to have a holistic approach where you specify all the information you need from a company. That means the company should provide all information once and in a single software designed for all the companies belonging to the same area and for all the countries where they has a business. The software will reduce bureaucracy and will provide the data in a workable format.
- Take into account the opinions from: companies, labour unions, shareholders, civil society, etc. They are important to specify which information should be provided and which should be published;

## **6. The OECD option**

In the Base Erosion and Profit Shifting (BEPS), the OECD is working on an “Action Plan” to provide tax administration more transparency and the information to assess high-level transfer pricing and other related risks. In the “Transfer Pricing-Action 13” the OECD gives a proposal of CBCR. That could be a base for international coordination, but be aware of its limits:

- The proposal of the OECD covers all the sector, however it applies only for the multinational companies having more than 750m in revenues. That could generate unfair competition among large multinational companies. The solution could be to use different versions of CBCR for different type of companies, and requiring some information from each of them, as we said before;

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- In the proposal of the OECD, the ultimate parent company of a group should provide the CBCR of all the companies of the group on request to the national tax administration where it has the fiscal residence. So, if a tax administration of another country want the CBCR of that multinational company, it should ask to the tax administration of that country. However, in the cases where the countries have not adopted the CBCR provided by the OECD or when the countries do not have an agreement of the automatic exchange of information or when that agreement does not work, the multinational company will provide the CBCR to each tax administration. In a nut shell, if a tax administration wants to make a control to a multinational group, in which the parent company has the fiscal residence abroad, they should contact the tax administration of that country, spending a lot of time and resources. So, if the government is likely to adopt the version of the CBCR produced by the OECD, it could be better not to have any agreement of the automatic exchange about CBCR with other jurisdictions, so the multinational companies should provide directly of all the information required.



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## **ANNEX: Comparison between the CBCR proposed by Canada, USA, OECD, EITI and EU**

- 1. Background;**
- 2. Introduction to the different Country By Country Reporting proposals (included EITI)**
- 3. Comparison between the different proposals of CBCR**
  - 3.1 Side-by-side comparison;**
  - 3.2 Step-by-step comparison.**

		<i>Legislation</i>
<b>1</b>	<b>CANADA</b>	Division 28 -Extractive Sector Transparency Measures Act
<b>2</b>	<b>USA</b>	Securities and Exchange Commission, Disclosure of Payments by Resource Extraction Issuers. ACTION: Final rule. 17 CFR Parts 240 and 249 [Release No. 34-67717; File No. S7-42-10] RIN 3235-AK85
<b>3</b>	<b>OECD</b>	OECD/G20 Base Erosion and Profit Shifting Project, Action 13: Country-by-Country Reporting Implementation Package
<b>4</b>	<b>EITI</b>	The EITI Standard
<b>5</b>	<b>EU Extractive Industries</b>	Art. 10 Directive 34 /2013
	<b>EU Bank</b>	Art. 89 Directive 36/2013

## 1. Background

Standards for more transparency in the revenues from natural resource are part of international accountancy and tax law. During the twenty century, international taxation and accountability has changed to better handle trade between countries and prevent double taxation (Hugh, 2013).<sup>2</sup>

In particular after the second war world, the increment in the commercial relations produce an increment of treaties between countries. The matter was important especially for multinational companies that had to face double taxation. Moreover, tax treaties could integrate national tax legislation to build a formal net to better operate. At the same time, the lack of legislation both at national and international level produced the perfect environment for, in the first place, avoid double taxation and then avoid taxation at all. To sum up and go forward to what concern with our study, it is only in 1998 that the OECD released a report on harmful tax competition. This report signed an important change of view in international cooperation efforts. The report raised three problems related to double non-taxation or reduced taxation: tax evasion, tax avoidance and harmful tax competition in general (OCDE, 1998).

Talking about meanly on west countries, governments do not care more about it until the financial crisis started on 2008 when they had a sharp downturn in revenues so they had to increase tax and cut public services. So, citizens become acknowledged that they have been supporting more, in proportion, of tax burden than multinational companies have been doing. Therefore, governments started to worry about tax evasion and tax avoidance perpetrated not only by citizens but also by MENs and the discussion at both national and international level retakes the right attention.

So, from 2011 and with more emphasis from 2013 different initiative are taken place to improve transparency and accountability at international level.

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<sup>2</sup> From the very outset, [the drafters of the model convention] realized the necessity of dealing with the questions of tax evasion and double taxation in co-ordination with each other. It is highly desirable that States should come to an agreement with a view to ensuring that a taxpayer shall not be taxed on the same income by a number of different countries, and it seems equally desirable that such international cooperation should prevent certain incomes from escaping taxation altogether. The most elementary and undisputed principles of fiscal justice, therefore, required that the experts should devise a scheme whereby all incomes would be taxed once and only once. (Report prepared by the Committee of Experts on Double Taxation and Tax Evasion -League of Nations Publications-, 1927, p. 23).



## **2. Introduction to the different country by country reporting proposals (included EITI)**

### **2.1 Canada**

As in the US and the EU standards, the Canadian Division 28 -Extractive Sector Transparency Measures Act- applies to entities that are directly or indirectly engaged in the commercial development of oil, natural gas, or minerals that are subject to Canadian law.

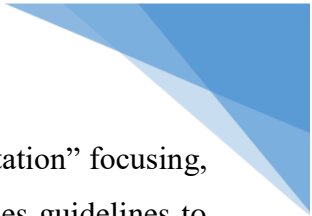
Extractive entities are required to report annually on payments made to governments relating to the commercial development of oil, natural gas, or minerals, at home and abroad. Payments will be broken down in the report in a project basis.

### **2.2 OECD**

Although only in the last few years the OECD has put more efforts in tax matter, it was always at the forefront to improve international tax co-operation between governments to counter international tax avoidance and evasion.

In one of its last studies, the OECD is trying to give an international solution at the global problem about “Base Erosion and Profit Shifting” (BEPS). BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises (MNEs).

In an increasingly interconnected world, national tax laws have not always kept pace with global corporations, fluid movement of capital, and the rise of the digital economy, leaving gaps that can be exploited to generate double non-taxation. This undermines the fairness and integrity of tax systems. Fifteen specific actions are being developed in the context of the OECD/G20 BEPS project to equip governments with the domestic and international instruments needed to address this challenge. The first set of measures and reports were released in September 2014. Combined with the work to be completed in 2015, they will give countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where the value is created, while, at the same time, give business greater stability by reducing disputes over the application of international tax rules, and standardising requirements. We notice also that in that matter, non-OECD/G20 countries are involved on an equal footing.



Among the 15 Actions, we will analyse the Action 13: “Transfer Pricing Documentation” focusing, in particular, on Country by Country Reporting. On this matter, the OECD provides guidelines to implement exchange of information between countries about specific data like, e.g. number of employees, taxes and others of MNEs with consolidated group revenue in the preceding fiscal year of €750 million or more.

### 2.3 US (Dodd Frank Act)

The Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the Dodd-Frank Act, is a United States federal law that places regulations of the financial industry in the hands of the government. The legislation, enacted in July 2010, aims to prevent another significant financial crisis by creating new financial regulatory processes that enforce transparency and accountability while implementing rules for consumer protection.

In August 2012, the Securities and Exchange Commission (SEC) adopted the amendments to its disclosure rules to implement Section 1504 -SEC Rule 13(q)- of the Dodd-Frank Act<sup>3</sup>. This compels every oil, gas and mining US companies or foreign companies to publish their payments to governments, such as taxes, royalties and licence fees, in every country they do business in.

The U.S. law requires companies to report any payment of US \$100,000 and above made on every individual extraction project they operate. This means that for the first time, people living near mines or oil fields will be able to see in detail how much money is being generated by local projects, and hold their governments to account if they don't see the benefits.

On October 25, 2012, the American Petroleum Institute and the U.S. Chamber of Commerce, along with two other trade associations, sued the SEC, claiming that it had made a number of procedural errors in promulgating the rules. These groups also claimed that Section 1504 violates oil companies' First Amendment free speech rights.

On July 2, 2013, the D.C. District Court ruled that the SEC should have provided justifications for the following two requirements of the regulations:

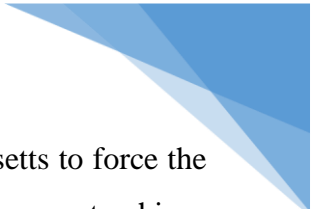
- 1) requiring company reports to be made public and
- 2) allowing no exemptions to address the oil industry claim that some countries prohibit disclosure of the information required under the law.

The SEC is not appealing this decision and is, instead, working on Section 1504 rules that will take into consideration the court's decision. The SEC has not yet issued a new rule. On September 18,

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<sup>3</sup> (U.S. - Securities and Exchange Commission, 2012)





2014, Oxfam filed a lawsuit in the U.S. District Court for the District of Massachusetts to force the SEC to issue a new resource extraction disclosure rule. The SEC has said that it cannot achieve Oxfam’s timeframe demands for issuing a new rule. Finally, the outcome concerning rules for Section 1504 of Dodd-Frank is unknown.

#### 2.4 The EITI standards<sup>4</sup>

The Extractive Industries Transparency Initiative (EITI) sets a global standard to promote openness and accountable management of natural resources in producing countries, where companies operate. The standard is implemented by governments, in collaboration with companies and civil society. Countries implementing the EITI disclose information on tax payments, licences, contracts, production and other key elements around resource extraction. The aim of EITI is to make public the data of the payments that a government receives by companies working on natural resources in that country. In the EITI, government, companies and civil society work together. The government and the companies report the data about taxes, royalties, bonuses, etc. received and paid, and the civil society organizations should give the linkage between the information provided and the society. To adhere to the EITI standard there are several steps to follow. First, the country become a candidate and if it respects the standard and reports the information, could become a compliant country. Finally, if the country does not follow the standards over years, it is first suspended and then removed.

#### 2.5 EU – European Commission (CBCR)

In 2010 European Commission (European Commission - Director General for Internal Market and Services, 2010) started talking about “Country By Country Reporting”. The first step was a public consultation where the Commission was considering two types of disclosures:

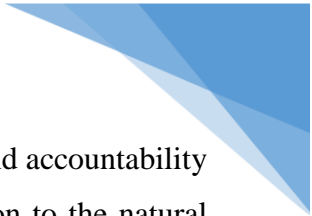
- a. General country-by-country reporting by multinational companies and
- b. Specific transparency obligations for companies which are active in the extractive industry (minerals, oil, and gas) in third countries;

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<sup>4</sup> **Multi-Donor Trust Fund for EITI** (The World Bank, 2012)

In the context of the EITI, the World Bank manages a Multi-Donor Trust Fund (MDTF) that gives financial support to the World Bank’s technical assistance, governments and civil society implementing EITI.

As of February 2012, the supporting donors that have contributed to the MDTF were as follows: Australia; Belgium; Canada; the European Commission; Denmark; Finland; France; Germany; Japan; the Netherlands; Norway; Spain; Switzerland; the United Kingdom, which was the launch donor; and the United States.



The European Commission, in its first purpose, had focused to raise transparency and accountability on multinational in general and extractive sector in particular. The special attention to the natural resource was justify for the adoption on July of 2010 by US of the Section 1504 of the Dodd-Frank Act, requires all extractive companies listed on US stock-exchanges, and among them some EU based companies, to publish payments made to governments on a country-by-country basis.

Moreover, the International Accounting Standard Board (IASB) was working on a possible country-by-country reporting requirement, which could be incorporated within a replacement Standard for IFRS 6 (International Financial Reporting Standard) for the extractive sector. Although, it was supposed that sooner the CBCR statement would have been mandatory, the IASB has never revised the standard and the requirement has never been disclosed for accounting propose.

The following year, on 25 October 2011, the Commission adopted a legislative proposal<sup>5</sup> requiring the disclosure of payments to governments on a country and project basis by listed and large non-listed companies with activities in the extractive industry (oil, gas and mining) and loggers of primary forests, the so-called “Country By Country Reporting” (CBCR).

The proposal established rules ensuring that these companies would disclosed payments to governments (e.g. taxes on profits, royalties, and licence fees) on a country basis. Reporting would also be carried out on a project basis, where payments have been attributed to specific projects.

This disclosure requirement would have revised the Accounting Directives<sup>6</sup> (78/660/EEC and 83/349/EEC) and the Transparency Directive (2004/109/EC). The Transparency Directive was interested by the requirement in order to include all companies which are listed on EU regulated markets even if they are not registered in the European Economic Area (EEA) and incorporated in a third country.

An EU mandatory disclosure requirement would complement the EITI efforts by legally requiring companies registered or listed in the EU to disclose payments to governments along the same lines as EITI. In doing so, the EU proposal strengthening the EITI standards to those countries that have not implemented the EITI yet.


On 26<sup>th</sup> June 2013 the European Parliament adopted the proposal<sup>7</sup>.

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<sup>5</sup> (see IP/11/1238 and MEMO/11/734)

<sup>6</sup> The Accounting Directive regulates the information provided in the financial statements of all limited liability companies which are registered in the European Economic Area (EEA).

<sup>7</sup> Directive 2013/34/EU Of The European Parliament And Of The Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive



Always in the 2013, the Commission has introduced a requirement to disclosure country-by-country reporting ("CBCR") by banks and investment firms under Article 89 of Directive 2013/36/EU (CRD IV).<sup>8</sup> After a period of public consultation and a report to investigate whatever the requirement could have negative consequences, it has become effective form 1 January 2015.

On 17 June 2015, the European Commission launched a public consultation on corporate tax transparency in the EU. This consultation aims to find out whether requiring companies to disclose more information about the taxes they pay could help tackle tax avoidance and aggressive tax practices in the EU. For instance, companies could be required to disclose the taxes they pay, in every country where they operate. This consultation is part of the broader Action Plan for Fair and Efficient Corporate Taxation. The Action Plan sets to reform the corporate tax framework in the EU, in order to tackle tax abuse, ensure sustainable revenues and support a better business environment in the Single Market.

Below we have reported the five key areas identified by the European Commission to improve fair and efficient in corporate taxation

1. Re-launching the Common Consolidated Corporate Tax Base (CCCTB);
2. Ensuring fair taxation where profits are generated;
3. Creating a better business environment;
4. Increasing transparency;
5. Improving EU coordination.

Recently, on 08 July of 2015, the European Parliament vote to insert a requirement for large undertakings to publish information country by country, on profits or losses before tax, taxes on profits or losses and public subsidies received. Public interest entities, including listed companies and insurance firms, as well as companies designated by member states as public-interest entities because of their significant public relevance, should also be required to do so. The amendment is now on the Council.

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2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

<sup>8</sup> Directive 2013/36/EU Of The European Parliament And Of The Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

This is a further step in a general country-by-country reporting by multinational companies as in the first designation in 2010.

### 3. Comparison between the different proposals of CBCR

(3.1 Side-by-side comparison; 3.2 Step-by-step comparison)

#### 3.1 Side-by-side comparison;

In the tables below of this section, we compare the relevant points of the different standards of transparency for multinational companies illustrate in the precedent paragraph. For further information go to the next paragraph where we report more details of the standard. Following every table, we comment only relevant contrast and innovation of the standards.

We organised the analysis in five different main areas:

1. When: Deadlines;
2. Who: Active Actor, Filing obligations subject, Payee;
3. What: Payments Categories and main characteristics;
4. Relevant points.

#### 1. When: Deadlines;

<b>WHEN:</b>	<b>Time to file the report</b>	<b>Apply first time to the fiscal year started on or after</b>	<b>First deadline</b>
<b>Canada</b>	150 days	-	-
<b>OECD</b>	12 months to file the report and 15 months to exchange the information.	01/01/2016	31/12/2017
<b>USA</b>	150 days	- <sup>9</sup>	-

<sup>9</sup> The final rules of 1504 Dodd Frank act was supposed to be implemented from the first time to the fiscal year started on or after 30/09/2013, however how the D.C. District Court on July 2, 2013 ruled that the SEC should have provided more justifications about the publicity of the report and the no exemption especially in the countries where it could be against the law public a report, the application of the final rules is unknowing.

<b>EITI</b>	No older than the second year (recommended one year)	-	18 months after the country is admitted as candidate
<b>EU Extractive Industries</b>	Annually	-	-
<b>EU Bank</b>	Annually	01/01/2015	-

## 2. Who: Active Actor, Filing obligations subject, Payee;

<b>WHO:</b>	<b>Subjective requirement</b>	<b>Objective requirement</b>	<b>Filing Obligation</b>	<b>Payee</b>
<b>Canada</b>	Listed, large or any other prescribed entities	Engaged in the commercial development of oil, gas or minerals or control (also indirectly) an entity engaged in it.	Parent companies, also on behalf of the wholly-owned subsidiary and reporting entities	Any government in Canada or in a foreign state, or a body established to exercise the power
<b>OECD</b>	MNEs with consolidated group revenue in the preceding fiscal year of €750 million or more.	No sector restriction	The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or the Constituent Entity	Country Tax Administration
<b>USA</b>	All U.S. companies and foreign companies	Engaged in the commercial development of oil, natural gas, or minerals (Prevalence of substance over form)	Issuer, a subsidiary of the issuer, or an entity under the control of the issuer	Federal Government and foreign government
<b>EITI</b>	Companies and government entities	Oil, gas and mining companies	Companies and Governments	Multi-stakeholder group

<b>EU Extractive Industries</b>	Large undertakings and all public-interest entities	Engaged in the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials or in the logging of primary forests.	Parent or in alternative the subsidiary	Any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority.
<b>EU Bank</b>	A credit institution or an investment firm	By the nature of the institution	-	Member State and by third country in which it has an establishment

Talking about the entities that have to deal with the report we evidence these points:

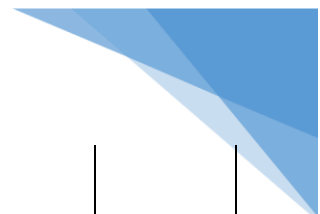
- a) The OECD does not provided any sector in particular. As the OECD, the European Commission, in its first proposal, did not specify the sector. However, in its amends of the Directives it has introduced the standard for transparency in natural resources and logging before and then for the banking system. Logging and banking are innovation in respect of the other provisions. Moreover, the EU is working to adopt a new provision in the line of the OECD.
- b) Canada definition of the subject engaged in natural resource is larger than the others. Indeed, the definition includes not only entities working or control companies working on natural resources, but also “companies controlled or deemed to be controlled by an entity deemed to be controlled” (Parliament of Canada, 2015). So, an entities should report payments, also if it has just an influence on a companies that has an influence on other company which activity is related to natural resources. This open definition gives a prominence of the substance over form. In other words, it includes the real entity that have the control. On the other hand, it could be difficult to identify which company has a deemed control and which does not.
- c) In the provision of the OECD, the subject obligated to file the report is the Ultimate Parent Entity. However, where there is not an exchange information agreement convention in force or when the same agreement or convention does not work properly, other companies of the same group should file the report with the information from all group. So, in this case the multinational company provides the same report to different tax administrations. In this case,

the responsibility to send the report to other tax administration shift from the tax authority to the company. So, to sum up we could illustrate the two possible scenarios.

- In the first one, there is an exchange information agreement or convention in force, the ultimate parent company files the report to the tax administration of the country where it resides for tax purpose. In this scenario, tax administration of the other countries where the multinational company works, ask for a copy of the report. In this case we have two deadline: 12 months from the end of the financial year to file the report, more other 15 months from the request to exchange it to other tax administration.
- In the alternative scenario, there is not an exchange information agreement or convention in force, so the multinational companies should file the same report to the tax administration in each country where they work. In this case, there is a save of time and the cost for the tax administration: the procedure is easier and faster. At the same time, MNEs do not have more work because the report should be the same in each countries.

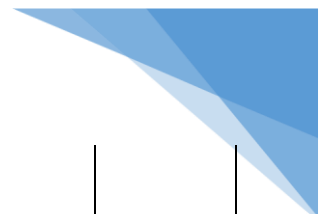
### 3. What: Payments Categories and main characteristics;

WHAT	“Payment” categories	Type of payment	Limit	Broke down of the payments	Records
<b>Canada</b>	(a) taxes; (b) royalties; (c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions; (d) production entitlements; (e) bonuses, including signature, discovery and production bonuses; (f) dividends other than dividends paid as ordinary shareholders; (g) infrastructure improvement payments; or (h) any other prescribed category of payment.	Whether monetary or in kind	the amount prescribed by regulation for the category of payment, if no \$ 100.000	Country and project basis	Prescribed period, or 7 years



<p><b>OECD</b></p>	<p>1. revenue, 2. profit (loss) before income tax, 3. income tax paid, 4. income tax accrued, 5. stated capital, 6. accumulated earnings, 7. number of employees, and 8. tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates; 9. An identification of each Constituent Entity of the MNE Group setting out the jurisdiction and the business activities</p>	<p>Material payments</p>	<p>-</p>	<p>Country level</p>	<p>-</p>
<p><b>USA</b></p>	<p>1. taxes; 2. royalties; 3. fees; 4. production entitlements; 5. bonuses; 6. dividends; and 7. payments for infrastructure improvements 8. The final rules will require the disclosure that are part of a plan or scheme to evade the disclosure requirements (no social and community payments)</p>	<p>Material and in kind.</p>	<p>\$100,000</p>	<p>Total amount of payments made for each project and to each government,</p>	<p>-</p>
<p><b>EITI</b></p>	<p>The following revenue streams should be included: i. the host government’s production entitlement (such as profit oil); ii. national state-owned company production entitlement; iii. profits taxes; iv. royalties; v. dividends; vi. bonuses; vii. licence fees and viii. any other significant payments and material benefit to government.</p>	<p>Cash or in-kind</p>	<p>No mandatory. Countries often set materiality levels based on company or payment size.</p>	<p>The multi-stakeholder group is required to agree the level of disaggregation for the publication of data (by individual company, government entity, revenue stream and at project level)</p>	<p>-</p>





<b>EU Extractive Industries</b>	(a) production entitlements; (b) taxes; (c) royalties; (d) dividends; (e) bonuses; (f) licence fees and (g) payments for infrastructure improvements.	Whether in money or in kind	€ 100 000	Government and project for each category	
<b>EU Bank</b>	(a) name(s), nature of activities and geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) profit or loss before tax; (e) tax on profit or loss; (f) public subsidies received.	-	-	-	-

Talking about payments we focus on the following differences:

- a) There are two different scope of the requirement data. The standards require to display the different type of payments like taxes, royalties, dividends licences, etc. However, the OECD and the EU Bank provisions include also information like the number of employees, revenues, etc. In our point of view, it could be seen a slime difference between the two payment requirements. Additional information allows a set of data needed to do tax audit. The other type of data emphasise on the accountability of governments to the civil society. The question behind the requirements shift from how much the companies should have paid on taxes to how much the government would have earned by the use of the natural resources. So, if the MNEs does not pay a fair amount on taxes, in the requirement of the OECD, the investigation should start on the accounts of the MNEs, in a view to fight the “Base Erosion and Profit Shifting”. In the second case, a small amount of taxes paid by MNEs is a government’s responsibility and its use of natural resources. We are aware, that the problem could be generated by MNEs and by the government at the same time, so the focus will be more on governments or on MNEs depending on the country.
- b) Talking about the “Broke down of the payments” the OECD does not require the specification on a project level. The project level it could be important to identify the data for each project in a country. It is important especially for civil society that should ask transparency and accountability for government in each area where the natural resources are. However, we

understand that because the OECD does not specify the sector it could be difficult each time identify the project; in natural resource area it could be easier identify the project. At the same time, we evidence that the USA legislation explicitly refers that the payments should be report for each categories not only on a project level, but also to each level of governments or public agency that it is entitled to receive the payments. This gives more transparency and tracks to where the money goes.

#### 4. Relevant points (1/2).

	<b>Reports accessible to the public</b>	<b>Reports of another jurisdiction / with other legislation</b>	<b>Enforce compliance and fine</b>	<b>Audit</b>	<b>Exemption</b>
<b>Canada</b>	Accessible	Possible if it satisfies the reporting requirements	Authorities could inspect records relating to payments, and other general compliance enforcement measures. An offence is punishable on summary conviction and liable to a fine of not more than \$250,000	Attestation made by a director or officer of the entity, or an independent auditor or accountant, that the information in the report is true, accurate and complete.	No exemption
<b>OECD</b>	Only for tax authorities on request	No applicable	Purpose to extend their existing transfer pricing documentation penalty regime.	No audit requirement	No exemption
<b>USA</b>	Accessible	No permitted	No specific measures	No audit requirement	No exemption
<b>EITI</b>	Accessible	No applicable	Suspension and cancellation	An independent auditor, who reconciles the information provided by the companies and the government	



<b>EU Extractive Industries</b>	Accessible	Possible if it satisfies the reporting requirements	No specific measures	No audit requirement	Companies are exempt from reporting payments in countries where such public disclosure is clearly prohibited by the criminal legislation of that country. In such cases the company should identify in the report the government concerned
<b>EU Bank</b>	Accessible	No prevision	No specific measures	The information shall be audited	

Among these points we focus on the following differences:

- a) Talking about “report accessible to the public” only the OECD requires confidentiality of the information. In this exception, the information is available only to the tax administration and it is not public. This is because the OECD provision is included in the BEPS guidelines, to fight tax evasion and avoidance so the information is available to tax authorities for auditing. One of the weaknesses to limit the openness of the data could be on the role of the tax administration. The tax administration has to send the report to other administration within 15 months. On the other cases, the responsibility of the report is on companies and there is a save of time (15 months less) and money (public official in the tax administration could do another task). The OECD made this limitation to protect the companies from competitors that do not have the duty to report the data. Publish the information could mean more accountability and more transparency to manage natural resource. It is believed that the companies doing this report could easily sign a contract with the government for their standards of transparency and accountability. However, we believe that a country takes in consideration many other factors to contract a company or to give it a licence. So, a company not publishing any information could have an advantage over a company that does. On the other side, we, also, believed that company make the information accessible to the public, allow civil society to be aware on how the government is managing the natural resource of the country. This is important because in many country the revenue from natural resources are relevant and public

accountability on it could improve and strength institutions trough, for example, a democratic process.

### Others: Relevant points (2/2)

	<b>Accrual or cash basis</b>	<b>Formal and active participation of the civil society</b>	<b>Formal and active participation of the Government or its representatives</b>	<b>Finance resource</b>	<b>Government obligation on reporting</b>	<b>Review</b>
<b>Canada</b>	-	No formal participation	No formal and active participation	No specify	None	No prevision
<b>OECD</b>	-	No formal participation	No formal and active participation	No specify	None	No prevision
<b>USA</b>	Cash basis	No formal participation	No formal and active participation	No specify	None	No prevision
<b>EITI</b>	Cash basis	Multi-stakeholder group that involves the government, companies and the full, independent, active and effective participation of civil society	Government are part of multi-stakeholder group	The Secretariat is funded by supporting governments companies. Multi-Donor Trust Fund to support implementation. Governments pay for the implementation of the standards	Reporting template that outlines the revenues received from the extractive industry	No prevision

<b>EU Extractive Industries</b>	-	No formal participation	No formal and active participation	no specify	none	by 21 July 2018
<b>EU Bank</b>	-	No formal participation	No formal and active participation	no specify	none	No prevision

In these last points, the implementation of the report the EITI engages, in addition to the companies, both governments and civil societies. This is quite important because it gives them an active role in the process. However, we believed that little participation has been achieved thus far. For example, in the EITI standard, the government has to reproduce the data his receive form companies. If the government cannot produce the data it is a problem of tax administration. We believe that it could be useful track the money not only from the companies to the government but also trough the government and from the government to the civil society. With no trasparent government, there is a paradox: high standard of transparency for companies working in natural resource and high level of corruption.

### 3.2 Step-by-step comparison

<b>A. WHO</b> <ol style="list-style-type: none"><li>1. Subjective requirement</li><li>2. Objective requirement</li><li>3. Filing obligation</li><li>4. Payee</li></ol>	<b>B. WHAT</b> <ol style="list-style-type: none"><li>1. Payments categories:</li><li>2. Type of payment</li><li>3. Limit:</li><li>4. Broke down of the payments</li><li>5. Records:</li></ol>
<b>C. RELEVANT POINT</b> <ol style="list-style-type: none"><li>1. Reports accessible to the public</li><li>2. reports of another jurisdiction / with other legislation</li><li>3. Enforce compliance and fine</li><li>4. Audit</li><li>5. Accrual or cash basis</li><li>6. Formal and active participation of the civil society</li><li>7. Formal and active participation of the Government or its representatives</li><li>8. Finance resource</li><li>9. Government obligation on reporting</li><li>10. Review</li><li>11. Declared scope</li></ol>	

#### A. WHO

##### CANADA

Entities:

#### 1. Subjective requirement


“Entity” means a corporation or a trust, partnership or other unincorporated organization:

- (a) an entity that is listed on a stock exchange in Canada;
- (b) an entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
  - i. it has at least \$20 million in assets,
  - ii. it has generated at least \$40 million in revenue,
  - iii. it employs an average of at least 250 employees; and
- (c) any other prescribed entity.

#### 2. Objective requirement

An entity:

- (a) that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or

- 
- (b) that controls a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere.

Commercial development of oil, gas or minerals” means

- (a) the exploration or extraction of oil, gas or minerals;
- (b) the acquisition or holding of a permit, licence, lease or any other authorization to carry out any of the activities referred to in paragraph (a); or
- (c) any other prescribed activities in relation to oil, gas or minerals.

Control means:

- (a) companies directly or indirectly controlled in any manner;
- (b) companies deemed to be controlled and
- (c) companies controlled or deemed to be controlled by an entity deemed to be controlled

### **3. Filing obligation**

1. Parent companies
2. parent companies may report on behalf of the wholly-owned subsidiary
3. Reporting entities will also have to report on payments made by non-reporting entities that they control and that are engaged in the commercial development of oil, gas, or minerals

### **4. Payee**

- (a) any government in Canada or in a foreign state;
- (b) a body that is established by two or more governments;
- (c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b); or
- (d) any other prescribed payee.
- (e) Deemed payee

OECD

MNEs:

#### **1. Subjective requirement**

MNEs with consolidated group revenue in the preceding fiscal year of €750 million or more.

## 2. Objective requirement

No sector restriction

## 3. Filing obligation

The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or the Constituent Entity.

- (a) Ultimate Parent Entity of an MNE Group
- (b) Surrogate Parent Entity. A company of a MNE group that report on behalf of the other companies of the group when:
  - a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports;
  - b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect;
  - c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Systemic Failure;
- (a) Constituent Entity substitutes the Ultimate Parent Entity when one or more of the following conditions apply:
  - a) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or,
  - b) there is not an agreement of the automatic exchange of CBCR between the jurisdiction in which the Ultimate Parent Entity is resident and the other one.
  - c) there is an agreement of the automatic exchange of CBCR but the jurisdiction in which the Ultimate Parent Entity is resident has suspended it or persistently failed to provide it.

## 4. Payee

Country Tax Administration

USA

Resource extraction issuers:

### 1. Subjective requirement

All U.S. companies and foreign companies should submit the report regardless of

- the size of the company;
- the extent of business operations;
- owner (government owned or );



- any situations in which foreign law may prohibit the required disclosure. (currently no foreign law prohibits the disclosure)
- confidentiality or sensitive information (the instances when an issuer has a confidentiality provision in a relevant contract or commercially or competitively sensitive information, regardless of the existence of a confidentiality provision in a contract)
- the safety and security of its employees and operations

The issuer, a subsidiary of the issuer or an entity under the control of the issuer.

The final rules do not extend the disclosure requirements to foreign private issuers that are exempt from Exchange Act registration pursuant to Rule 12g3-2(b).

## **2. Objective requirement**

Definition: “The commercial development of oil, natural gas, or minerals” include:

- a) the activities of exploration, extraction, processing, and export, or the acquisition of a license for any such activity.
- b) “Commercial development” the definition leaves discretionary authority to include other significant activities directly relating to oil, natural gas, or minerals.


Except:

- Marketing;
- Transportation in the list of covered activities, unless those activities are directly related to the export of the oil, natural gas, or minerals;
- Activities that are ancillary or preparatory to such commercial development (A manufacturer of a product used in the commercial development of oil, natural gas, or minerals is not considered to be engaged in the commercial development of the resource).

Focus

- Prevalence of substance over form: Whether an issuer is a resource extraction issuer will depend on its specific facts and circumstances
- activity or payment that, although not in form or characterization of one of the categories specified under the final rules, is part of a plan or scheme to evade the disclosure required under Section

## **3. Filing obligation**



The final rules require a resource extraction issuer to provide disclosure of payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer to a foreign government or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.

A facts-and-circumstances determination of control consistent with the federal securities laws is preferable to a bright-line rule limiting disclosure to payments made only by consolidated entities.

#### **4. Payee**

- (a) In the United States the requiring disclosure of payments will made to the Federal Government and not to state and local governments ;
- (b) A “foreign government” includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government

### **EITI**

Companies, Government

#### **1. Subjective requirement**

Companies and government entities, including state-owned enterprises

- (a) All companies making material payments to the government. An entity should only be exempted if its payments and revenues are not material.
- (b) All government entities receiving material revenues and all the benefit stream in the scope of the EITI report in aggregate form. If the government could not report, an Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government revenues

#### **2. Objective requirement**

Oil, gas and mining companies


#### **3. Filing obligation**

Companies and Governments

#### **4. Payee**

Multi-stakeholder group (The government, companies and civil society must be fully, actively and effectively engaged in the EITI process.)

EU Extractive Industries



Undertaking active in the extractive and logging industry

### **1. Subjective requirement**

That obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:

- (a) the parent undertaking is subject to the laws of a Member State; and
- (b) the payments to governments made by the undertaking are included in the consolidated report on payments to governments drawn up by that parent undertaking in accordance with Article 44.

An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments when:

- (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking or
- (b) extremely rare cases where the information necessary for the preparation of the consolidated report on payments to governments in accordance with this Directive cannot be obtained without disproportionate expense or undue delay or
- (c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

### **2. Objective requirement**

Exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the economic activities listed in Section B, Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2

**SECTION B — MINING AND QUARRYING**

05 Mining of coal and lignite

05.1 Mining of hard coal

05.10 Mining of hard coal 0510

05.2 Mining of lignite

05.20 Mining of lignite 0520

06 Extraction of crude petroleum and natural gas

06.1 Extraction of crude petroleum
06.10 Extraction of crude petroleum 0610
06.2 Extraction of natural gas
06.20 Extraction of natural gas 0620
07 Mining of metal ores
07.1 Mining of iron ores
07.10 Mining of iron ores 0710
07.2 Mining of non-ferrous metal ores
07.21 Mining of uranium and thorium ores 0721
07.29 Mining of other non-ferrous metal ores 0729
08 Other mining and quarrying
08.1 Quarrying of stone, sand and clay
08.11 Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate 0810*
08.12 Operation of gravel and sand pits; mining of clays and kaolin 0810*
08.9 Mining and quarrying n.e.c.
08.91 Mining of chemical and fertiliser minerals 0891
08.92 Extraction of peat 0892
08.93 Extraction of salt 0893
08.99 Other mining and quarrying n.e.c. 0899

## **Exclusion**

09 Mining support service activities
09.1 Support activities for petroleum and natural gas extraction
09.10 Support activities for petroleum and natural gas extraction 0910
09.9 Support activities for other mining and quarrying
09.90 Support activities for other mining and quarrying 0990

Undertaking active in the logging of primary forests. Undertaking with activities as referred to in Section A, Division 02, Group 02.2 of Annex I to Regulation (EC) No 1893/2006, in primary forests.

02 Forestry and logging
02.1 Silviculture and other forestry activities
02.10 Silviculture and other forestry activities 0210
02.2 Logging
<b>02.20 Logging 0220</b>
02.3 Gathering of wild growing non-wood products
02.30 Gathering of wild growing non-wood products
0230
02.4 Support services to forestry
02.40 Support services to forestry 0240
Division / Group / Class/ ISIC Rev. 4

### 3. Filing requirement

Any large undertaking or any public-interest entity active in the extractive industry or the logging of primary forests

### 4. Payee

'Government' means

any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 22(1) to (6) of this Directive;

## EU BANK

WHO: institution

### 1. Subjective requirement

'Institution' means: a credit institution or an investment firm. (point (3) of Article 4(1) of Regulation (EU) No 575/2013)

### 2. Objective requirement

By the nature of the institution.

### 3. Filing requirement

There is not specification about filing requirement, so we suppose by the same institution.

### 4. Payee:

Member State and by third country in which it has an establishment.

## **B. WHAT**

### **CANADA**

#### **1. Payments categories:**

Payment means a payment that is made to a payee in relation to the commercial development of oil, gas or minerals and that falls within any of the following categories of payment:

- (a) taxes, other than consumption taxes and personal income taxes;
- (b) royalties;
- (c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;
- (d) production entitlements;
- (e) bonuses, including signature, discovery and production bonuses;
- (f) dividends other than dividends paid as ordinary shareholders;
- (g) infrastructure improvement payments; or
- (h) any other prescribed category of payment.

#### **2. Type of payment**

Whether monetary or in kind

#### **3. Limit**

An entity must disclose any payments within a category of payment that are made to the same payee, if the total amount of all those payments during the financial year is at least:

- (a) the amount prescribed by regulation for the category of payment; or
- (b) if no amount is prescribed for the category, \$100,000.

#### **4. Brokedown of the payments**

The Minister may specify, in writing, the way in which payments are to be organized or broken down in the report — including on a project basis — and the form and manner in which a report is to be provided.


#### **5. Records:**

An entity must keep records of its payments made in a financial year for a prescribed period or, if no period is prescribed, for a seven-year period that begins on the day on which the entity provides the report.

### **OCDE**

#### **1. Payments categories:**

Aggregate information relating to

- 
1. revenue,
  2. profit (loss) before income tax,
  3. income tax paid,
  4. income tax accrued,
  5. stated capital,
  6. accumulated earnings,
  7. number of employees, and
  8. tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;
  9. An identification of each Constituent Entity of the MNE Group setting out
    - a. the jurisdiction of tax residence of such Constituent Entity, and where different,
    - b. the jurisdiction under the laws of which such Constituent Entity is organised, and
    - c. the nature of the main business activity or activities

## **2. Type of payment**

Companies must disclose all **material payments** in accordance with the agreed reporting templates and in line with the company's audited figures.

## **3. Limit: -**

## **4. Brokedown and organization of the payments**

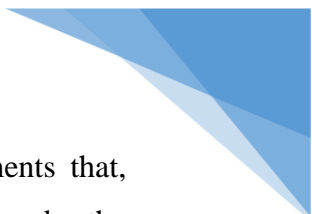
Country level (each jurisdiction in which the MNE Group operates)

## **5. Records:-**

### USA

#### **1. Payments categories:**

1. taxes (taxes levied on corporate profits, corporate income, and production, but will not be required to disclose payments for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes);
2. royalties;
3. fees (rental fees, entry fees, and concession fees,);
4. production entitlements;
5. bonuses (signature, discovery, and production bonuses);
6. dividends; and
7. payments for infrastructure improvements

- 
8. The final rules will require disclosure with respect to activities or payments that, although not in form or characterization of one of the categories specified under the final rules, are part of a plan or scheme to evade the disclosure requirements under Section 13(q)

The final rules do not require a resource extraction issuer to disclose social or community payments, such as payments to build a hospital or school, because it is not clear that these types of payments are part of the commonly recognized revenue stream this treatment of social or community payments is consistent with the EITI, which encourages, but does not require

## **2. Type of payment**

Material and in kind. for each project and to each government, issuers will need to determine the monetary value of in-kind payments. the final rules specify that issuers may report in-kind payments at cost, or if cost is not determinable, fair market value, and provide a brief description of how the monetary value was calculated

## **3. Limit**

The final rules define “not de minimis” to mean any payment, whether made as a single payment or series of related payments, that equals or exceeds \$100,000 during the most recent fiscal year.

## **4. Brokedown and organization of the payments**

Total amount of payments made for each project and to each government, issuers will need to determine the monetary value of in-kind payments

(Thus, if an issuer has more than one project in a host country, and that country’s government levies corporate income taxes on the issuer with respect to the issuer’s income in the country as a whole, and not with respect to a particular project or operation within the country, the issuer would be permitted to disclose the resulting income tax payment or payments without specifying a particular project associated with the payment)

## **5. Records: -**

### EITI

#### **1. Payments categories**

The multi-stakeholder group should agree on who prepares the **contextual information** for the EITI Report (3.1).

- information about the extractive industries. This information should include a summary description of the legal framework and fiscal regime (3.2);



- together with an overview of: the extractive industries (3.3);
- the extractive industries' contribution to the economy (3.4);
- production data (3.5);
- state participation in the extractive industries (3.6);
- revenue allocations and the sustainability of revenues (3.7 -3.8),
- license registers and license allocations (3.9- 3.10) and
- any applicable provisions related to beneficial ownership (3.11) and contracts (3.12).

The following *revenue* streams should be included:

- i. the host government's production entitlement (such as profit oil);
- ii. national state-owned company production entitlement;
- iii. profits taxes;
- iv. royalties;
- v. dividends;
- vi. bonuses, such as signature, discovery and production bonuses;
- vii. licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
- viii. any other significant payments and material benefit to government.

## **2. Type of payment**

Revenues, whether **cash or in-kind**, are recorded in the national budget.

Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable, e.g. sovereign wealth and development funds, sub-national governments, state-owned companies, and other extra-budgetary entities.

## **3. Limit:**

A threshold amount or percentage to determine if a company or a payment is significant to an outcome. EITI implementing countries often set materiality levels based on company or payment size.

## **4. Brokedown and organization of the payments:**

The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity, and revenue stream. Reporting at project level is required.

## **5. Records: -**



## EU Extractive Industries

### **1. Payments categories**

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends;
- (e) signature, discovery and production bonuses;
- (f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;  
and
- (g) payments for infrastructure improvements.

### **2. Type of payment**

Payment means an amount paid, whether in money or in kind, for activities. Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.

### **3. Limit**

Any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report if it is below EUR 100 000 within a financial year.

### **4. Broke down and organization of the payments**

- (a) the total amount of payments made to each government;
- (b) the total amount per type of payment as specified in points (5)(a) to (g) of Article 41 made to each government;
- (c) where those payments have been attributed to a specific project, the total amount per type of payment as specified in point (5)(a) to (g) of Article 41, made for each such project and the total amount of payments for each such project.

'Project' means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project;

Where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project

has been reported. Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level.

**5. Records: -**

**EU BANK**

**1. Payments categories:**

- (a) name(s), nature of activities and geographical location;
- (b) turnover;
- (c) number of employees on a full time equivalent basis;
- (d) profit or loss before tax;
- (e) tax on profit or loss;
- (f) public subsidies received.

**2. Type of payment:-**

**3. Limit:-**

**4. Broke down and organization of the payments:-**

**5. Records:-**


**C. RELEVANT POINT**

**1. Reports accessible to the public**

**CANADA:** The Division 28 of the Extractive Sector Transparency Initiative Measures Act says that the report should be accessible to the public for example, posting the reports on their corporate websites. If an entity not have a website, the Minister will specify an alternative approach to making the report accessible to the public

**OECD:** The report should be confidential. It should be available only for tax authorities on request.

**USA:** Section 13(q), of section 1504 of the Dodd-Frank Act, requires resource extraction issuers to provide the payment disclosure publicly. In addition, Section 13(q) requires a resource extraction issuer to provide information regarding those payments in an interactive data format. To the extent public disclosure of this information could result in costs related to competitive concerns. So, issuers could provide the information confidentially to the government and then the government could publish a compilation of the information, interested



parties might still be able to obtain the information pursuant to the Freedom of Information Act (FOIA).)

**EITI:** Widely available to the public, for example published on the national EITI website and/or other relevant ministry and agency websites, in print media or in places that are easily accessible to the public;

**EU Extractive Industries:** Undertakings that prepare and make public a report complying with third- country reporting requirements assessed, could be exempted to do the report but they should publish it.

**EU BANK:** The information shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

## **2. Reports of another jurisdiction / with other legislation (e.g. provinces, territories or foreign countries)**

**CANADA:** Reports of another jurisdiction or with other legislation (e.g. provinces, territories or foreign countries) can be submitted to satisfy the reporting requirements under the Act. It is subjected to any conditions the Minister may impose.


**OECD:** (no applicable)

**USA:** The final rules also do not permit resource extraction issuers to satisfy the disclosure requirements adopted under Section 13(q) by providing disclosures required under other extractive transparency reporting requirements, such as under home country laws, listing rules, or an EITI program. There is not an exemption for any situations in which foreign law may prohibit the required disclosure.

**EITI:** (no applicable)

**EU Extractive Industries:** "Undertakings that prepare and make public a report complying with third-country reporting requirements assessed as equivalent to the requirements of the EU are exempt from the requirements to do the report except for the obligation to publish that report. The criteria identified by the Commission to consider the requirement from third-country as equivalent to that include the following:

- i. target undertakings,
- ii. target recipients of payments,
- iii. payments captured,
- iv. attribution of payments captured,

- 
- v. breakdown of payments captured,
  - vi. triggers for reporting on a consolidated basis,
  - vii. reporting medium,
  - viii. frequency of reporting, and
  - ix. anti-evasion measures;"

**EU Bank:** No prevision

### **3. Enforce compliance and fine**

**CANADA:** Authorities for the Minister to enforce compliance with the Act, including requesting an audit from a reporting entity or further information related to payments made to governments. It also provides for authorities to inspect records relating to payments, and other general compliance enforcement measures.

Every person or entity that fails to comply with or that contravenes the regulations or give a false or misleading information is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$250,000.

**OECD:** Purpose to extend their existing transfer pricing documentation penalty regime.

**USA:** No specific measures.

**EITI:** Suspension and cancellation.

**EU Extractive Industries:** General provision of administrative penalties in the Directive.

**EU Bank:** General provision of administrative penalties in the Directive.

### **4. Audit**

**CANADA:** The report is to include an attestation made by a director or officer of the entity, or an independent auditor or accountant, that the information in the report is true, accurate and complete.

**OECD:** No specification.

**USA:** The final rules do not require the resource extraction payment information to be audited.

**EITI:** Companies and the host country's government generally each submit payment information confidentially to an independent administrator selected by the country's multi-stakeholder group, frequently an independent auditor, who reconciles the information provided by the companies and the government, and then the administrator produces a report.

**EU Extractive Industries:** General provision of administrative penalties in the Directive.

**EU Bank:** The information provided shall be audited in accordance with Directive 2006/43/EC

## 5. Accrual or cash basis

**CANADA:** No specification

**OECD:** No specification

**USA:** The final rules do not require the resource extraction payment information to be provided on an accrual basis, but on cash basis.

**EITI:** Since company accounts typically are prepared on an accrual basis, company auditors might provide a reconciliation statement to explain the difference between reported cash payments and financial statements.

**EU extractive industries:** No specification

**EU Bank:** No specification

## 6. Formal and active participation of the civil society

**CANADA:** No formal participation

**OECD:** No participation at all.

**USA:** No formal participation

**EITI:** Multi-stakeholder oversight including a functioning multi-stakeholder group that involves the government, companies and the full, independent, active and effective participation of civil society.

**EU Extractive Industries:** No formal participation.

**EU Bank:** No formal participation.

## 7. Formal and active participation of the Government or its representatives

**CANADA:** No formal and active participation

**OECD:** No formal and active participation of tax authorities

**USA:** No formal and active participation

**EITI:** "multi-stakeholder oversight including a functioning multi-stakeholder group that involves the government, companies and the full, independent, active and effective participation of civil society"

**EU Extractive Industries:** No formal and active participation

**EU Bank:** No formal and active participation.

## 8. Finance resource



**CANADA:** No specify.

**OECD:** No specify.

**USA:** No specify.

**EITI:** The international community provides support of EITI implementation both bilaterally and through the EITI Multi-Donor Trust Fund managed by the World Bank. The Secretariat is funded by supporting governments and supporting companies. Implementing country governments, pay for the implementation and Validation of their EITI process<sup>10</sup>.

**EU Extractive Industries:** No specify.

**EU Bank:** No specify.

### **9. Government obligation on reporting**

**CANADA:** None.

**OECD:** None.

**USA:** None

**EITI:** The government also completes a reporting template that outlines the revenues received from the extractive industry. The government sends the completed reporting template to the Independent Administrator at the same time as the companies submit their information.

**EU Extractive Industries:** None.

**EU Bank:** None.

### **10. Review**

**CANADA:** No prevision.

**OECD:** The OECD will review the CBCR in 2020.

**USA:** No prevision.


**EITI:** No specific provision.

**EU Extractive Industries:** The review shall take into account international developments, in particular with regard to enhancing transparency of payments to governments, assess the impacts of other international regimes and consider the effects on competitiveness and security of energy supply. It shall be completed by 21 July 2018.

The report shall be submitted to the European Parliament and to the Council, together with a legislative proposal. That review shall consider:

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<sup>10</sup> For more details see “Governance Structure” on the EITI web-page. <https://eiti.org/about/governance>

- 
- the extension of the reporting requirements to additional industry sectors;
  - whether the report on payments to governments should be audited;
  - the disclosure of additional information on the average number of employees, the use of subcontractors and any pecuniary penalties administered by a country and
  - the feasibility of the introduction of an obligation for all Union issuers to carry out due diligence when sourcing minerals to ensure that supply chains have no connection to conflict parties and respect the EITI and OECD recommendations on responsible supply chain management.

**EU Bank: -**