



Disclosing payments to governments

Mining and metals in
an era of transparency



This is an update to our “Disclosing government payments” report that was published in 2013 and provides a brief summary of each of the global transparency initiatives and the current status of each, along with a high-level, side-by-side comparison of the reporting requirements from each set of rules.

Disclosure requirements regarding payments to governments for natural resource extraction

There are several billion people who live in countries with extensive oil, natural gas and other mineral resources. Unfortunately, these countries, though rich in natural resources, have tended to underperform economically, generally have a higher incidence of conflict and often suffer from poor governance. If properly developed and managed, natural resources can go a long way to alleviate poverty and improve the quality of life for the people in these jurisdictions. There is a view that poor governance results in poor natural resource management. Transparency may be one solution to improving the governance in these countries, thereby improving the long-term sustainable development of their natural resources.

Louis D. Brandeis, an Associate Justice of the United States Supreme Court said, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

Good transparency can also improve the investment climate of a country by providing a clear signal to investors and international financial institutions that the government is committed to good governance and the rule of law. A stronger investment climate can promote greater economic and political stability which, in turn, leads to preventing conflicts based on the natural resources in the country.

Mining and metals companies and investors can benefit as well from improved transparency. Of course, political and economic stability are essential for a long-term capital business like natural resource development. The investment horizon is long and the risk significant in an unstable environment. Of course, extractive industry companies also benefit from disclosing the sizable contributions they make to the countries they operate.

The effort to enhance transparency in the extractive industries began many years ago when the Extractive Industries Transparencies Initiative (EITI) was launched in 2003. That was followed by legislation enacted in the United States

under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires certain disclosures by natural resource extractive companies that are subject to the reporting requirements of the U.S. Securities and Exchange Commission (SEC). The European Union enacted similar requirements in 2013 by passing new Accounting and Transparency Directives. That EU law requires the Member States to enact conforming legislation no later than the fall of this year (2015). Canada's Extractive Sector Transparency Measures Act (ESTMA) became law in June 2015 and is effective for years beginning after that date.

In July 2013, EY published a white paper describing the emerging reporting requirements on extractive industries. Since that time there have been more definitive rules issued by governments, and we will see actual reports to be issued for calendar 2015 and 2016. This report updates our last white paper and provides our high-level, side-by-side comparison of several of the reporting requirements.

Extractive Industries Transparency Initiative (EITI)

The EITI was started in 2003 with the goal of enhancing good governance of natural resource development through improving transparency and accountability in the extractive industries. The EITI association is an organization of sponsoring countries, natural resource extractive companies and nongovernmental organizations (NGOs) representing civil society interests and partner organizations. All have come together to develop a framework for the disclosure of payments to governments, based on two primary elements:

- ▶ Companies will publish (disclose) what they pay to governments, and governments will publish what they receive in an EITI report.
- ▶ A multi-stakeholder group of governments, companies and civil society oversee the disclosure process.

Increased transparency by mining and metals companies can only help to enhance investor confidence and to generate trust with stakeholders. Improving transparency can also help companies show their social contribution – providing local communities with greater access to information and in turn helping to refute claims of not paying fair share.

Adoption of the EITI standard is discretionary, and implementation is the responsibility of individual countries.

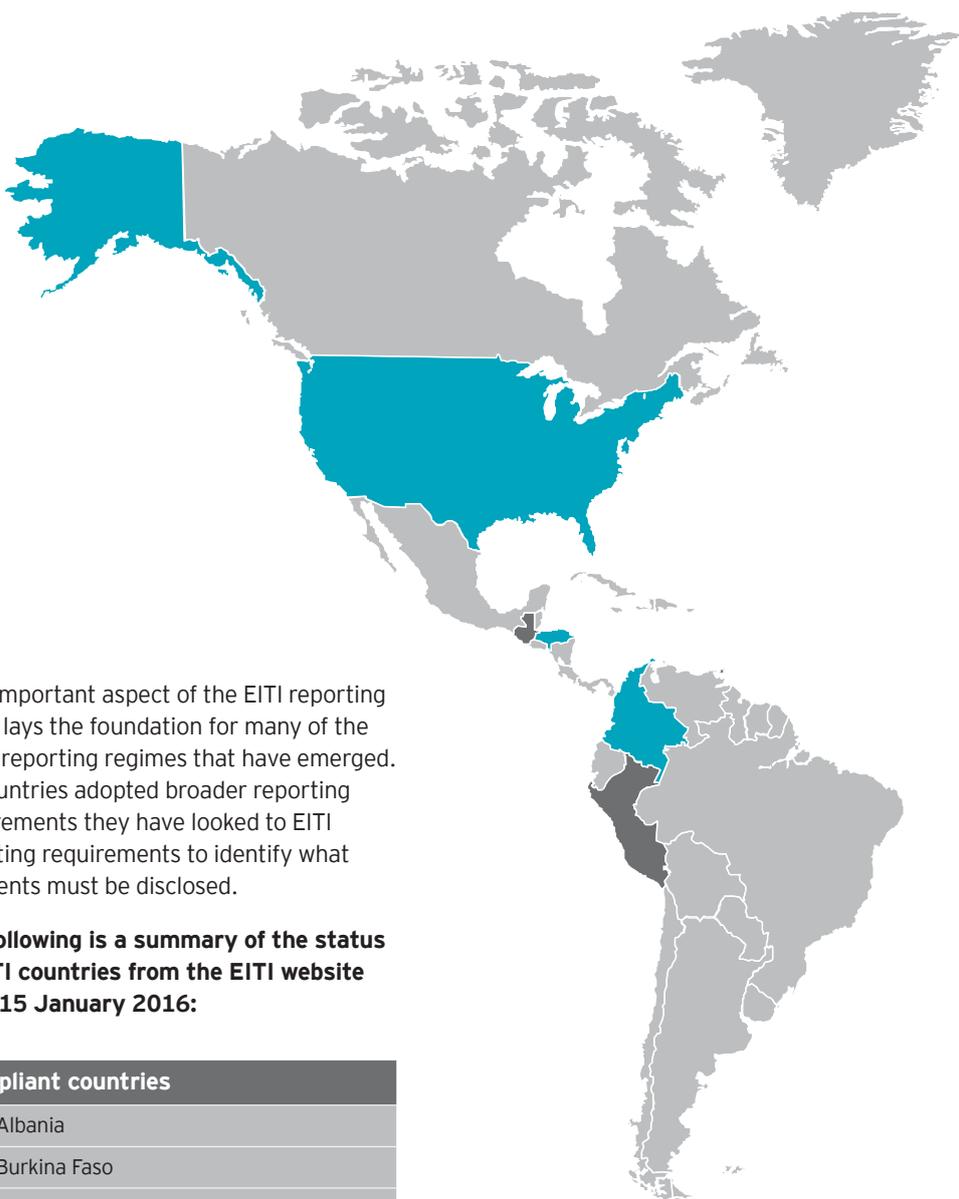
For a country to become an EITI candidate, it must first meet four sign up steps. When the EITI Board admits an EITI candidate, it establishes deadlines for publishing the first EITI report and undertaking validation. An implementing country's first EITI report must be published within 1.5 years from the date that the country was admitted as an EITI candidate. EITI candidate countries are required to commence validation within 2.5 years of becoming an EITI candidate, demonstrating compliance with the EITI requirements. If the EITI Board considers that the country meets all of the requirements, the country will be designated as EITI compliant.

In effect, the EITI framework and disclosure requirements must be adopted into individual country law, therefore impacting extractive industry companies that operate within the country.

- ▶ The framework also requires the payment reports to be based on accounts that have been audited to international standards.
- ▶ The EITI Association independently validates the laws or regulations and the independent auditing process before the country is deemed to be EITI compliant, and countries must maintain adherence to all the EITI rules to retain that status.

Currently, the EITI has designated 31 countries as compliant (23 countries in 2013) and 17 others as candidates (12 countries in 2013). In addition, EITI has temporarily suspended compliant/candidate status for four countries.

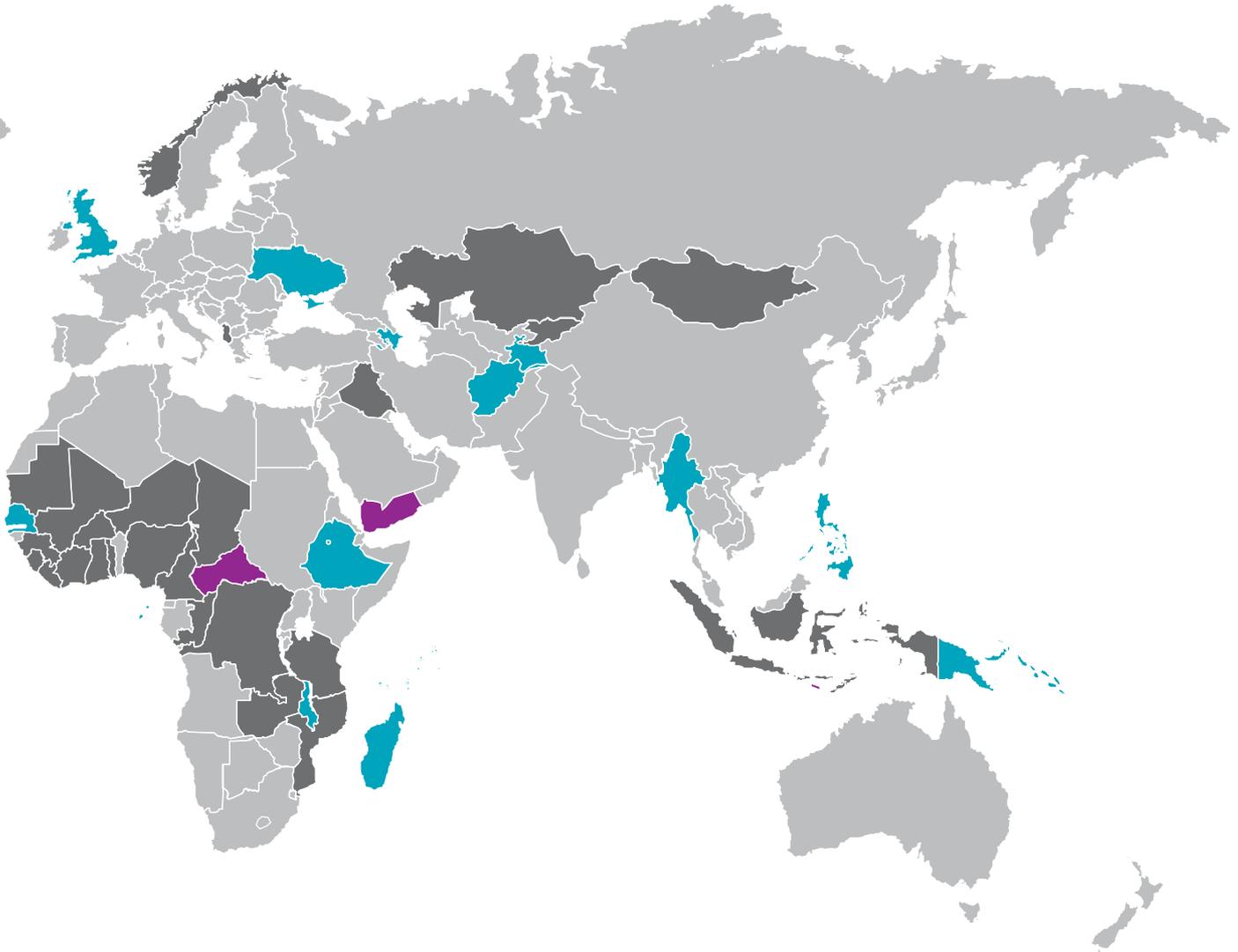
The EITI Association publishes and periodically updates the *EITI Standard*. The *Standard* consists of two parts: implementation of the EITI standard and governance and management. The implementation portion of the *Standard* includes the principles of EITI, core requirements to be followed by compliant countries, a validation guide for auditing of reports and finally the protocol for participation of civil society. The *Standard*



is an important aspect of the EITI reporting and it lays the foundation for many of the other reporting regimes that have emerged. As countries adopted broader reporting requirements they have looked to EITI reporting requirements to identify what payments must be disclosed.

The following is a summary of the status of EITI countries from the EITI website as of 15 January 2016:

Compliant countries	
1.	Albania
2.	Burkina Faso
3.	Cameroon
4.	Chad
5.	Cote d'Ivoire
6.	Democratic Republic of Congo
7.	Ghana
8.	Guatemala
9.	Guinea
10.	Indonesia
11.	Iraq
12.	Kazakhstan
13.	Kyrgyz Republic
14.	Liberia
15.	Mali
16.	Mauritania
17.	Mongolia
18.	Mozambique
19.	Niger
20.	Nigeria
21.	Norway
22.	Peru
23.	Republic of the Congo
24.	Sierra Leone
25.	Tanzania
26.	Timor-Leste
27.	Togo
28.	Trinidad and Tobago
29.	Zambia



Candidate countries	
1.	Afghanistan
2.	Azerbaijan
3.	Colombia
4.	Ethiopia
5.	Honduras
6.	Madagascar
7.	Malawi
8.	Myanmar
9.	Papua New Guinea
10.	Philippines
11.	São Tomé and Príncipe
12.	Senegal

13.	Seychelles
14.	Solomon Islands
15.	Tajikistan
16.	Ukraine
17.	United Kingdom
18.	United States of America

Suspended status	
1.	Central African Republic
2.	Yemen



Dodd-Frank Wall Street Reform and Consumer Protection Act

Under Section 1504 of the Dodd-Frank Act, Congress added Section 13(q) to the Securities Exchange Act of 1934, which mandates the SEC to issue a rule requiring issuers engaged in the commercial development of oil, gas or minerals to disclose the amount of payments by type, by project and by government annually. Congress enacted the rule to increase the transparency of payments made to governments for commercially developing their natural resources.

In August 2012, the SEC issued its initial rule to comply with Section 1504 of the Dodd-Frank Act, which would have been effective for fiscal years ending after September 2013. However, in October 2012 the U.S. Chamber of Commerce, American Petroleum Institute (API), Independent Petroleum Association of America (IPAA) and the National Foreign Trade Council sought a court order declaring Section 1504 of the Dodd-Frank Act “null, void, and with no force or effect.” The plaintiffs in the lawsuit argued that the SEC failed to fully consider the competitive effects of the regulation, which was mandated by the Dodd-Frank Act. The requirement to disclose payments that may be contrary to either local law or by contract will lead to a loss of business for US companies bidding on resources in countries where such disclosures are barred.

The US District Court issued a decision in July 2013 vacating the original Securities Exchange Commission (SEC) final rule (the Rule) implementing Section 1504 of the Dodd-Frank Act that requires extractive industries companies to disclose payments to the US federal and foreign governments. The court sided with the plaintiffs in the lawsuit remanding the Rule back to the SEC to

be re-drafted. The court suggested that the SEC's interpretation of two key provisions in the law was "arbitrary and capricious."

Finally, on December 11, 2015, the SEC issued a revised rule in response to both the 2013 District Court decision, as well as litigation filed by Oxfam America which urged the SEC to issue a new final rule to bring them into force.¹

- ▶ The new proposed rule requires all issuers (companies subject to SEC reporting requirements) engaged in the commercial development of oil, natural gas or minerals to annually disclose payments to the federal and foreign governments.
- ▶ Companies will have to disclose the type and amount of payments by project and by government for all payments that equal or exceed US\$100,000, individually or in aggregate.
- ▶ Disclosures must be made in electronic format using the Extensible Business Reporting Language (XBRL) on a new Form SD that will be due 150 days after the issuer's fiscal year-end, but that will not be subject to an independent audit.
- ▶ Disclosures will have to be made for fiscal years beginning after the date that the new proposed rules become final. Assuming the rules are finalized as expected during 2016, the rules would first be effective for calendar year 2017 filers, with initial reports due in May 2018.
- ▶ Primary differences from the original SEC rule include a new provision that enables a filer to request exemption from the disclosure requirements, and the SEC will issue a list of comparable reporting regimes under which reporting will satisfy these requirements.
- ▶ While these rules are a congressional mandate and not directly as a result of EITI or other global initiatives, there has been an attempt to conform these rules where possible to other regimes.

European Union Accounting Directive

In 2013, the European Parliament adopted a new Accounting Directive and amended the Transparency Directive. These actions introduced an obligation for large extractive and logging companies to report the payments they make to governments. The directives established rules that are equivalent to (and in some cases exceed) the disclosure requirements of the SEC rule discussed above.

Each EU Member State is required to transpose the Directives into local law. The United Kingdom and France have been early adopters, with the UK rules becoming effective in December 2014. The first reports for the UK are with respect of 2015 payments (to be filed in 2016).

The UK's implementation of the EU accounting directives requires UK-registered companies to file or publish reports in relation to financial periods beginning on or after 1 January 2015 in 2016, up to 11 months after the company's financial year-end. UK incorporated subsidiaries of parent companies located in other EU states, and they will be exempted from producing the report for one year. There is a penalty regime that includes a criminal offence. The International Association of Oil & Gas Producers (OGP) and the International Council on Mining and Metals (ICMM) have jointly published guidance to assist companies in meeting the UK's disclosure requirements.

Note that France, and most recently Germany, have passed legislation conforming their reporting rules to the EU Directives. Their reporting requirements will become effective for years beginning after 2015, so they will encompass payments to governments in 2016 to be reported sometime in 2017. Norway, which is not in the EU but a member of the European Free Trade Association (EFTA), has enacted

similar reporting requirements to that of the EU Directives. Like the UK, the Norwegian reporting is effective for payments made in 2015 to be reported in 2016.

Canada's Extractive Sector Transparency Measures Act (ESTMA)

In October 2014, the Federal Government of Canada tabled the Extractive Sector Transparency Measures Act (ESTMA) as part of the government's Economic Action Plan. The purpose of ESTMA is to satisfy international commitments to participate in the fight against corruption through the implementation of measures that enhance transparency and impose reporting obligations on significant government payments. The ESTMA received royal assent in December 2014 and came into force on 1 June 2015. Extractive entities subject to the Act will be required to report payments, including taxes, royalties, fees and production entitlements, of C\$100,000 or more to all levels of government in Canada and abroad for each of their financial years that begin after 1 June 2015. Reports are required to be filed within 150 days of the entity's financial year-end and must be made publicly accessible.

At the time of writing, the federal government has published draft guidance for reporting requirements under the ESTMA, as well as Technical Reporting Specifications and Reporting Templates. The draft guidance is intended to aid businesses in their understanding of the ESTMA requirements. Final guidance is expected to be issued toward the end of 2015. Affected entities should review the published guidance and commence implementing policies and procedures to identify, track and report payments to governments in order to be in a position to produce reports in a timely and accurate manner.

¹ [http://www.ey.com/Publication/vwLUAssetsAL/TothePoint_CC0434_SECExtractivePayments_16December2015/\\$FILE/TothePoint_CC0434_SECExtractivePayments_16December2015.pdf](http://www.ey.com/Publication/vwLUAssetsAL/TothePoint_CC0434_SECExtractivePayments_16December2015/$FILE/TothePoint_CC0434_SECExtractivePayments_16December2015.pdf)

In addition, the federal government issued a substitution determination stating that the reporting requirements in the EU Accounting and Transparency Directives met the purpose of the ESTMA and are an acceptable substitute for the requirements set out in the ESTMA. This means that reports submitted to EU and European Economic Area member states that have implemented the EU Directives may be used as a substitute for a report required under the ESTMA, provided certain additional conditions are met.

Australia's transparency initiatives

Australia does not currently have any publish-what-you-pay legislation. In October 2014, the then leader of the Australian Greens party (an independent party in Australia) introduced a private senator's bill entitled "Corporations Amendment (Publish-What-You-Pay Bill 2014)" into the Australian Senate (the upper house of the Australian Parliament). If passed by both houses of the Australian Federal Parliament (i.e., the Senate and the House of Representatives (the lower house)), the private senator's bill would amend the *Corporations Act 2001* and would mandatorily require all Australian-based extractive industries companies (including those involved in oil, gas, mining and logging) to publicly disclose any payments made to Australian and foreign governments.

The bill was introduced into the Senate in October 2014 and there was a first reading at that time, but there has been no debate on this as yet. Review of this

bill by the Selection of Bills Committee has been deferred numerous times since its introduction. So whether it will be referred for a Parliamentary Committee inquiry is not yet known: a referral to a Parliamentary Committee inquiry is not mandatory, but is common.

Irrespective of whether a referral is made, it should be noted that it will be difficult for the Greens to get this bill passed. This is because, as noted above, all bills have to go through both Houses of Parliament. Even if the bill is passed by the Senate, at this point in time, the current federal government has the majority of seats in the House of Representatives and it is considered unlikely they will pass this bill. As a result, at this stage, Australia is still quite some way from having formal publish-what-you-pay requirements.

While there is no legislation requiring companies to publish what they pay, there is legislation that requires the Australian Taxation office (ATO) to publish certain information about large taxpayers.²

How to comply with the various rules?

The disclosure standards all vary, so it will be a challenge for affected companies to ensure compliance since they may be subject to multiple standards. Every country looking to become EITI compliant will also establish disclosure and reporting standards that may differ from those already outlined in this paper.

Companies subject to the US rules will also need to determine how to report payments made under any joint operating arrangements. The reporting requirements

for these arrangements are not clear, because the SEC did not provide guidance on proportional reporting of payments made under joint operating agreements. The European directive is equally unclear as to whether the rules will apply to joint ventures, though multiple stakeholders in the legislative process have indicated their intent for such payments to be included. In addition, companies subject to the US rules will need to evaluate foreign entities to determine whether the entity could be considered a foreign government under the SEC's definition, which includes companies that are majority owned by a foreign government (e.g., a utility may be considered a foreign government).

There will need to be some judgment exercised in determining appropriate "project level" disclosure.

- ▶ We believe that the US SEC will look to other disclosures (e.g., those made in other public documents) to evaluate the company's determination of a "project." As noted above, we believe the EITI Standard will likely be the foundation for identifying what to report and at what level or project.
- ▶ Similarly, entities will need to consider whether suppliers, contractors and other third parties with whom they do business meet the definition of a "government entity" for which disclosure of payments is required. It will require reporting at a project level that is consistent with US SEC and EU requirements, such that all standards are working toward a consistent definition of a project.

All companies will want to identify the level of disclosure and reporting that will satisfy all standards to which they may be subject.

² Australian public reporting of tax data for large companies: In June 2013, legislation was enacted that imposes a legislative duty on the Commissioner of Taxation to publicly report information about certain corporate entities with a total income of A\$100 million or more for the 2013-14 income year and later income years. Australian majority owned Australian resident private companies with a total income less than A\$200 million are excluded from the report, based on amendments enacted in December 2015. The report will include total income, taxable income and income tax payable for affected entities. The report will also include information about Minerals Resource Rent Tax (MRRRT) payable by an entity for the 2013-14 and 2014-15 MRRRT years and Petroleum Resource Rent Tax (PRRT) payable by an entity for the year of tax starting on 1 July 2013 and later years of tax. The initial report for 2013-14 was published on 17 December 2015 and reports will be produced annually.

Related to the above, the Board of Taxation was requested to develop an Australian voluntary tax transparency code (Code). A consultation paper was released in December 2015 with initial recommendations that the Code would:

- ▶ Apply to companies with greater than A\$100m Australian turnover
- ▶ Set out "minimum standards" for expected disclosures:
 - ▶ Additions to financial statement tax disclosures (including Australian and global effective tax rates)
 - ▶ Annual taxes paid report (tax strategy, tax contributions, international related party dealings)
- ▶ Not be mandatory and no audit will be required. However, there may be potential reputation damage if businesses are found to have misleading disclosures
- ▶ Have the ATO or another agency appointed to publish a centralized database with links to the reports
- ▶ Be in operation in time for the reporting period for 2015-16 financial statements

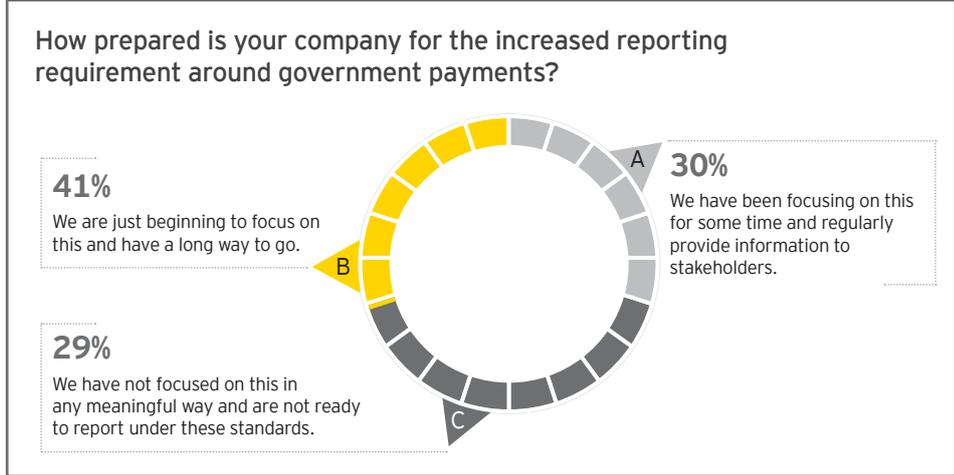
That will mean identifying the appropriate level of granularity required among the disclosure requirements and establishing processes to gather the payment data and assembling it for proper reporting. For example, identifying differences between cash basis and accrual reporting will also need to be considered and the related processes to compile the right information for the reporting standard.

Companies will need to keep in mind some of the implications of these new reporting requirements and consider the following:

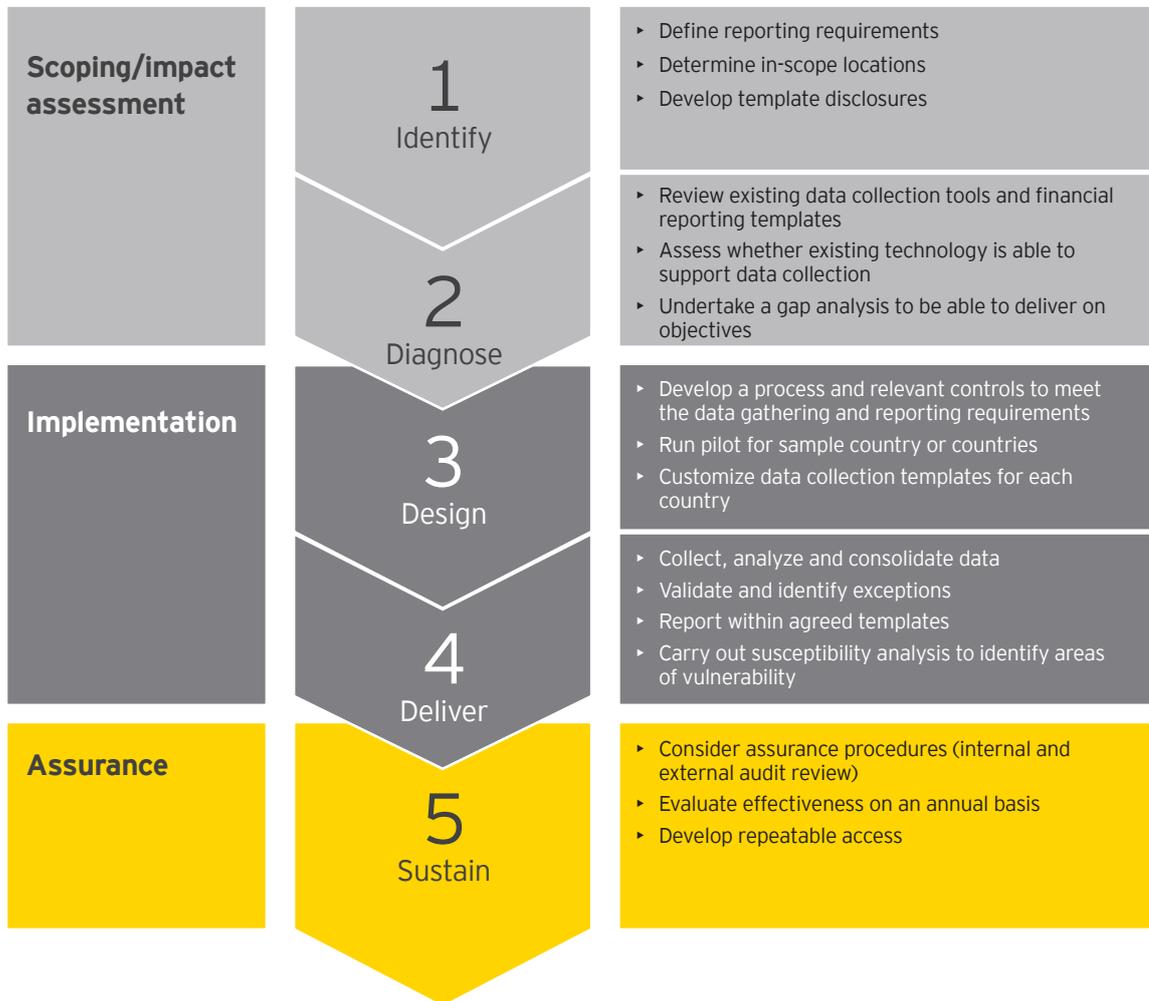
- ▶ Have they reviewed their systems to ensure they captured all the detail they will need, remembering that it will include details outside of tax?
- ▶ Do they have access to the data that will be required to be disclosed?
- ▶ If the data is available, will it be reliable?
- ▶ Can they create a standardized profile of payment information to disclose, even though the rules are still under development and countries may have unique requirements?
- ▶ Once summarized, will the information tell the story they believe it will tell?
- ▶ Have they reviewed the type of data they will be generating and are you happy for the data to be publically shared?

While the reporting of government payments will clearly be a significant challenge for many mining and metals companies, it should also create an opportunity to better communicate the contributions that are being made to the countries in which these companies operate.

In a global poll undertaken in June 2015 by EY on transparency in the sector, nearly 50% of the 725 mining and metals sector respondents felt that increased transparency requirements would be a financial and reporting burden, and 70% felt they were either unprepared for increased reporting requirements or have a lot of work to do to sufficiently comply.



How EY can help



We have developed a comprehensive approach to help our clients deal with these new reporting requirements, as well as with those under other transparency initiatives. This includes supporting tools and templates to assist you in identifying the potential impact on your business and help shape a cost-effective and pragmatic solution.

Side-by-side comparison of disclosure rules

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
To which industries do the rules apply?	Disclosure of payments to governments is required for "resource extraction issuers." A resource extraction issuer is any issuer engaged in the "commercial development of oil, natural gas or minerals."	Extractive industries (oil, natural gas, minerals) and the logging of primary forests.	EITI reporting must apply to all extractive industry companies.	Disclosure of payments is required for reporting entities engaged in the commercial development of oil, gas or minerals.	All extractive industries (including oil, gas, mining and logging)
What entities or undertakings are required to comply with the disclosure requirement?	The rule applies broadly to all US and foreign private issuers (including those that are government owned), regardless of their size or the scope of their activities that are a "resource extraction issuer." The rule does not apply to foreign private issuers that are exempt from Exchange Act reporting obligations and publish their home country annual reports under Exchange Act Rule 12g3-2(b).	Large undertakings and public interest entities active in applicable industries. "Large undertakings" are defined as undertakings that exceed two of the following three criteria: (1) balance sheet total assets of €20 million (£18 million in the UK), (2) net turnover of €40 million (£36 million in the UK) or (3) average number of employees equals 250 for the year. "Public interest entities" means entities governed under the laws of a Member State with securities traded on a regulated exchange of any Member State, certain credit institutions and certain insurance entities.	All extractive industry companies (including international, national and state-owned companies) operating in that country.	Reporting entities are defined to include any corporation, trust, partnership or other unincorporated organization that is engaged in, or controlling other entities engaged in, the commercial development of oil, gas or minerals in Canada or elsewhere. The ESTMA applies to any entity that is listed on a stock exchange in Canada or has a place of business in Canada, does business in Canada or has assets in Canada and annually meets at least two of the following three conditions for at least one of its two most recent financial years: i. It has at least C\$20 million in assets ii. It has generated at least C\$40 million in revenue iii. It employs an average of 250 employees	All Australian public companies and large proprietary companies
Are there any exemptions available (e.g., small issuers)?	There are no express exemptions, however, see discussion of foreign private issuers directly above.	Private undertakings that do not meet the definition of "large undertaking" (described above) are not required to report. Public interest entities are required to report regardless of their size.	An entity may be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would be immaterial.	There are no exemptions identified to date.	Very limited situations where the Australian Securities and Investments Commission (ASIC) may exempt a holding company from a reporting requirement in respect of a subsidiary under the proposed Act

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
Are there any exemptions available if issuer files under some other extractive transparency reporting initiatives?	Yes, filing requirements will be satisfied by filing a report prepared for foreign regulatory or US EITI purposes if the Commission deems the other rules to be substantially similar.	There is an "equivalence clause" that allows companies to publish a report based on the mandatory requirements of a third country, provided that these are considered equivalent to the EU requirement. No such equivalent rules have been identified at the date of this document's publication.	The EITI Report needs to be complete, and there are no exemptions. In some cases (such as license registers) externally published information may be referred to in the report.	The final rule includes a "substitution clause" that provides for reporting made under another extractive industry transparency initiative that, in the opinion of the Minister, achieves the purposes of the ESTMA. It could be used for submission to the appropriate Canadian authority as a substitute for reporting under the ESTMA. The Minister is required to make any such determination available to the public. Currently, only reporting under the EU Accounting and Transparency Directive has been determined to be an equivalent to the ESTMA.	Not known at this stage
Are there any exemptions available to certain payments where they are prohibited from being disclosed under a government or some other requirement?	There are no express exemptions, however, issuers may apply for exemptive relief on a case-by-case basis to the Commission.	The Accounting Directive contains no exception from its disclosure requirements for payments to governments, even if there are laws in the country of extraction or logging forbidding such disclosures or where contractual provisions prohibit the required disclosures.	No, there are not exemptions. In the case of information that is protected by privacy laws, governments are required to sign privacy waiver letters with companies in order to disclose this data in accordance with EITI requirements.	The ESTMA contains no exception from its disclosure requirements for payments to governments, even if there are laws in the country of extraction forbidding such disclosures. Aboriginal government payments in Canada are exempt for two years after the Act comes into force, but need to be disclosed afterwards.	Not known at this stage
Is the reporting mandatory?	Yes	Yes	Yes, if adopted by country.	Yes	Yes
Is the annual report required to be audited?	No	Yes	Yes, data is required to be subject to some kind of quality assurance, and it is at the discretion of the MSG what this requirement is. E.g., for PNG we have agreed that the data will just be signed off by a senior official from each entity.	The annual report will require attestation made by a director or officer of the entity or an independent auditor.	Yes, reporting companies would have to prepare annual reports, known as "publish what you pay reports," and lodge these reports with ASIC.

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
How are the impacted industries defined?	<p>Activities subject to disclosure include exploration, extraction, processing, export and other significant actions relating to oil, natural gas or minerals, or the acquisition of a license for any such activity. The rule does not include marketing, transportation, refining or smelting activities. Logging activities are not included.</p>	<p>An "undertaking active in the extractive industry" as "an undertaking with any activity involving the exploration, prospection, discovery, development and extraction of minerals, oil, natural gas deposits or other materials" within the following:</p> <ul style="list-style-type: none"> ▶ Mining of certain metals and minerals ▶ Extraction of crude petroleum and natural gas ▶ Quarrying ▶ Extraction of peat and salt ▶ Operation of gravel and sand pits <p>The logging of primary forests is defined to include "naturally regenerated forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed."</p> <p>Note that the final rules added "prospecting," which was not in the draft directive.</p> <p>The EU requirements do not include processing, export and the acquisition of licenses, which are activities included in the SEC Rule.</p>	<p>While extractive industries are referenced generally, the EITI criteria repeatedly refer to oil, gas and mining. Each enacting jurisdiction may have expanded the scope to include logging and other extractive industries not specifically mentioned.</p>	<p>Commercial development of oil, gas and minerals includes exploration, extraction and acquisition or holding of permits, licenses, leases or any other authorization to carry out exploration or extraction.</p> <ul style="list-style-type: none"> ▶ "Oil" means crude petroleum, bitumen and oil shale. ▶ "Gas" means natural gas, including all substances (other than oil) that are produced in association with natural gas. ▶ "Minerals" include all natural occurring metallic and nonmetallic minerals including coal, salt, quarry and pit material, and all rare and precious minerals and metals. 	<p>Unknown at this stage</p>
How do the rules apply to consolidated groups?	<p>Any payments made by the issuer, a subsidiary of the issuer or another entity it controls and which is either consolidated or proportionally consolidated under applicable accounting principles.</p>	<p>If the parent undertaking is required to prepare consolidated financial statements, it must also prepare the report of payments to governments on a consolidated basis. When a consolidated report is prepared, the subsidiaries are not required to report separately.</p>	<p>Those companies operating in the jurisdictions that have adopted EITI are required to report their payments to the federal and local governments. This applies to all entities who pay tax, including those with equity share or JV partners of operating entities.</p>	<p>Consolidated groups may report on behalf of all wholly owned subsidiaries or separately.</p>	<p>Unknown at this stage</p>

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
What payments must be disclosed?	<p>The rule requires disclosure of all payments (including in-kind payments) that are "not <i>de-minimis</i>," including:</p> <ul style="list-style-type: none"> ▶ Taxes that are based upon corporate income, production and profits (payments for taxes levied on consumption, such as value-added taxes, personal income taxes or sales taxes are not required to be disclosed) ▶ Royalties ▶ Fees (including licensing fees) ▶ Production entitlements ▶ Bonuses ▶ Dividends (these need not be disclosed if paid as common or ordinary shareholders and under same terms as other shareholders, unless the dividend is paid in lieu of production entitlements or royalties) ▶ Infrastructure improvements, such as building a road or railway (not including social payments, such as costs to build schools) 	<p>Payments (where paid in money or in kind) are defined to include:</p> <ul style="list-style-type: none"> ▶ Production entitlements ▶ Taxes levied on the income, production or profits of companies ▶ Royalties ▶ Dividends ▶ Signature, discovery and production bonuses ▶ Licence fees, rental fees, entry fees and other considerations for licences and/or concessions ▶ Payments for infrastructure improvements <p>Undertakings subject to the disclosure requirement must include in their reports any non-ordinary dividend payments paid to a host government, such as any dividends paid in lieu of production entitlements or royalties. According to the recitals to the Accounting Directive, such companies will not be required to disclose dividends paid to a host government as a common or ordinary shareholder of that undertaking, as long as the dividend is paid to the government under the same terms as to other shareholders.</p>	<p>The following revenue streams should be included in the payments to be reported:</p> <ul style="list-style-type: none"> ▶ Host government's production entitlement ▶ National state-owned company production entitlement ▶ Profit taxes ▶ Royalties ▶ Dividends ▶ Bonuses (such as signature, discovery, production) ▶ License fees, rental fees, entry fees and other considerations for licenses and/or concessions, as well as other significant benefits to government as agreed by the multi-stakeholder group 	<p>Government payments made to any Canadian or foreign government. A "payment" means either monetary or in-kind contributions in the form of:</p> <ul style="list-style-type: none"> ▶ Taxes (other than consumption taxes and personal income taxes) ▶ Royalties ▶ Fees (including rental fees, entry fees and regulatory charges, as well as fees or other consideration for licences, permits or concessions) ▶ Production entitlements ▶ Bonuses, including signature, discovery and production bonuses ▶ Dividends, other than dividends paid as ordinary shareholders ▶ Infrastructure improvement payments 	<p>A payment would only be a reportable payment if the total value of the payment and any related payments was more than A\$100,000. This threshold is in line with the reporting standards adopted and imposed by US, EU member states and the UK. The payments would have to be disclosed on a country-by-country and project-by-project basis. The Bill contains a long list of the types of payments that would be captured by the reporting requirements, and includes payments made to a government entity in respect of:</p> <ul style="list-style-type: none"> ▶ Production entitlements ▶ Taxes levied on the income, production or profits of a company (not including taxes levied on the personal income of individuals or on consumption or sales) ▶ Royalties and dividend payments ▶ Licence fees, rental fees, entry fees or other consideration for licences or concessions ▶ Infrastructure improvements and social payments; and security services
How are in-kind payments valued?	<p>Issuer may report in-kind payments at cost, or if cost is not determinable, fair market value, and must include a brief description of how the value was determined.</p>	<p>Payments in kind are to be reported based on their value and, where applicable, volume.</p> <p>Where reported in value, notes should describe how such value was determined.</p>	<p>Where agreements based on in-kind payments, infrastructure provisions or other barter-type arrangements play a significant role in the oil, gas or mining sectors, the multi-stakeholder group is required to agree to a mechanism for incorporating benefit streams under the agreements into its EITI reporting process.</p>	<p>In terms of the draft guidance, Reporting Entities may report in-kind payments at cost, or if cost is not determinable, fair market value, and must include a brief description of how the value was determined.</p>	<p>Unknown at this stage</p>

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
To which governmental body(s) do the rules apply?	The Rule does not apply to any US governmental entities other than the Federal Government. The definition of "foreign government" includes a department, agency or instrumentality of a foreign government or a company owned by a foreign government. This would include the government of a state, province, county, district, municipality or territory under a foreign government.	"Government" includes any federal or national, regional or local authority of a Member State or of a third country. This includes a department, agency or undertaking controlled by that authority. "Control" is defined in the same manner that is used for determining members included in a consolidated financial statement.	Payments made to the national government, as well as payments to local governments, must be reported. Payments that may be immaterial for the national government may be material to the local government and must be reported.	Any government in Canada or a foreign state, including a body established by one or more governments, or a trust, commission, corporation or body/ authority that is established to exercise or perform a function of government. This includes all levels of government such as municipal, state/provincial and federal, as well as Aboriginal governments in Canada.	The concept of government entity has been broadly drafted as meaning any of: <ul style="list-style-type: none"> ▶ The Australian Federal Government ▶ The government of an Australian state or territory ▶ The government of a foreign country (or part of a foreign country) ▶ An authority of any government referred to above ▶ A company owned by a government referred to above
Is there a materiality or <i>de-minimis</i> threshold below which no disclosure for payments is required?	Any payment (single or series of related payments) that equals or exceeds US\$100,000 during the respective fiscal year will be required to be disclosed.	The Directive states that payments need not be disclosed if a single payment or multiple related payments do not exceed £100,000. Because the UK has not adopted the Euro as its currency, the UK's implementation of the directive uses a threshold of £86,000.	Companies are required to report only material payments. Materiality is determined ahead of time as members of the multi-stakeholder group develop the criteria.	Disclosure threshold is C\$100,000, which includes the sum total of all payments made to the same government body during the financial year.	A payment would only be a reportable payment if the total value of the payment and any related payments was more than A\$100,000.
Should payments be reported on cash or accrual basis?	Payments are required to be disclosed on a cash basis.	While not explicitly specified in the directive, the reference to "payment" indicates a cash basis.	The EITI criterion does not specify cash or accrual, however, the amounts reported are verified pursuant to an audit of the payments under international auditing standards.	Payments are required to be disclosed on a cash basis.	Unknown at this stage
What currency should companies use for the disclosures?	In either US dollars or the issuer's reporting currency. Translation, if applicable, can be in one of three ways: (1) by translating at the exchange rate existing at time of payment, (2) using the weighted average of the exchange rate during the period or (3) based upon exchange rate as of the issuer's fiscal year-end. The issuer must disclose the method used to calculate the currency conversion.	The directives do not address currency.	The currency is not addressed.	In either Canadian dollars (C\$) or the Reporting Entity's reporting currency for financial reporting purposes.	Australian dollars

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
Do the rules provide any relief for situations where obtaining data for disclosure is overly burdensome?	There are no express exemptions, however, issuers may apply for exemptive relief on a case-by-case basis to the Commission.	An undertaking, including a public-interest entity, need not be included in a consolidated report on payments to governments where at least one of the following conditions is fulfilled: <ol style="list-style-type: none"> 1. Severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking 2. Extremely rare cases where the information cannot be obtained without disproportionate expense or undue delay 3. The shares of that undertaking are held exclusively with a view to their subsequent resale <p>The above exemptions only if they are also used for the purposes of the consolidated financial statements (i.e., if that undertaking's financial results are not included in the group's consolidated financial statements for the same reasons).</p>	No relief provided however, enacting jurisdictions may provide for relief under their provisions.	No relief provided	Unknown at this stage
How should the payments be reported?	Disclosures must be presented on a new Form SD, which should include a brief statement in the body of the form entitled "Disclosures of Payments by Resource Extraction Issuers" directing users to the exhibit detailing payment information, which is subject to Exchange Act Section 18 liability. The form will not require officer certifications.	Reporting will depend on implementation by each Member State.	Companies file their information pursuant to the agreed-upon reporting templates.	The ESTMA Report should be published in PDF or XLS format on the internet and a copy of the Report, together with a contact form and a functional link to the Report, must be provided to Natural Resources Canada. The Report should be publicly available for a period of no less than five years.	Each publish-what-you-pay report would be required to set out all reportable payments made during the financial year by the reporting company (or by any subsidiary of the reporting company). ASIC would then be required to publish the publish-what-you-pay reports on their website within 28 days of their receipt and make these accessible free of charge.

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
What kind of detail of each payment needs to be made available in the disclosure?	<p>Each payment will be disclosed and listed in the attached exhibit to Form SD as follows:</p> <ul style="list-style-type: none"> ▶ By type and total amount of payments made for each "project" ▶ By type and total amount of payments made to each government ▶ Total amount of the payments, by category ▶ Currency used to make the payments ▶ Financial period in which the payments were made ▶ Business segment that made the payments ▶ The government that received the payments and the country in which the government is located ▶ The project of the issuer to which the payments relate <p>Only "material" payments are required to be reported. The proposed SEC rule provides that payments in their aggregated or individually exceeding \$100,000 are subject to the reporting.</p>	<p>The report is required to include the following:</p> <ul style="list-style-type: none"> ▶ The total amount of payments, including payments in kind, to each government within a financial year ▶ The total amount per type of payment, including payments in kind, to each government within a financial year ▶ Whenever the payments have been attributed to a specific project, the amount per type of payment, including payments in kind, for each such project within a financial year and the total amount of payments for each such project ▶ The final directive contains no reference to materiality. Instead, "any payment, whether made as a single payment or as a series of related payments" must be included in the report if it is €100,000 or more within a financial year 	<p>Companies file their information pursuant to the agreed-upon reporting templates.</p>	<p>Companies file their information pursuant to the published reporting templates. The report is required to include the following:</p> <ul style="list-style-type: none"> ▶ The total amount of payments, including payments in kind, to each payee within a financial year ▶ The total amount per type of payment, including payments in kind, to each payee within a financial year ▶ Whenever the payments have been attributed to a specific project, the amount per type of payment, including payments in kind, for each such project within a financial year and the total amount of payments for each such project 	<p>Unknown at this stage</p>

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
What about entity-level payments vs. project-level payments? Do they need to be apportioned to the project?	Certain payments (such as corporate taxes) may be disclosed at the entity level rather than apportioned to the project level.	Only payments that may be attributed to a project are disclosed for that project. The Directive allows for entity-level reporting in a similar manner to the SEC Rule. Payments made by the undertaking for obligations levied at the entity level may be disclosed at the entity level rather than the project level.	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	In terms of the draft guidance, certain payments (such as corporate taxes) may be disclosed at the entity level rather than apportioned to the project level.	Unknown at this stage
Is the term "project" defined?	Term was not defined in original rules, however, current proposed rules model definition on one used by EU Directives and Canadian ESTMA. Defined as operational activities that are governed by a single contract, licence, lease, concession or similar legal agreement, which form the basis for payment liabilities with a government.	The Directive defines "project" as "the operational activities that are governed by a single contract, licence, 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."	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	Not defined in the ESTMA. However, the draft guidance defines "project" as the operational activities that are governed by a single contract, licence, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. The draft guidance goes further to state that if multiple such agreements are substantially interconnected, this shall be considered a project. "Substantially interconnected" means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities.	Unknown at this stage
Is the phrase "business segment" defined?	It should be consistent with the reportable segments used by the issuer for financial reporting purposes.	No, the Directive does not require disclosure of payments by business segment.	This distinction is not addressed in the EITI criteria. Enacting jurisdictions may address this matter.	No	Unknown at this stage

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
What is the effective date for these rules?	Resource extraction issuers will be required to comply with the rule for fiscal years beginning after the finalization of the currently proposed rules. Assuming these rules are finalized during 2016, calendar year filers will be subject to these rules for 2017, with initial reports due in May 2018.	Member States must adopt the Accounting Directive by July 2015 and Transparency Directive by November 2015, and may provide that the rules apply to financial statements for financial years beginning on 1 January 2016.	The EITI provisions are enacted within each country that is a candidate for becoming EITI compliant. The actual date of enactment will vary by country.	ESTMA came into force on 1 June 2015 and applies to financial years that begin after that date. For Reporting Entities reporting on the calendar year, 2016 would be the first financial year for which government payment disclosures are required.	The bill was introduced into the Senate in October 2014 and there was a first reading at that time, but there has been no debate on this as yet.
Regular reporting deadline?	Form SD will be required to be filed no later than 150 days after a company's fiscal year-end.	In general, the report is required to be filed within six months of the year-end of the entity. The UK's implementation states that UK incorporated large entities must file the report with 11 months of the entity's year-end, whereas UK listed companies must publish the report within six months of the end of the entity's period.	The EITI criteria do not specify a filing deadline, however, continuous filing is suggested where possible. The information to report is subject to audits under international standards, therefore, filing when the audited financials are released is likely.	Yes, the deadline for reporting is no later than 150 days after the end of the Reporting Entity's financial year.	Unknown at this stage
What is electronic format of filing (e.g., PDF)?	The exhibit will be required to be formatted in an interactive format with Extensible Business Reporting Language (XBRL) tags.	Not addressed in the directive	This is not addressed.	PDF or XLS Reporting templates have been published by Natural Resources Canada.	
Must wholly owned subsidiaries file separate reports if the parent has filed a consolidated report on payments to governments?	Such subsidiaries shall not be required to separately file but would file a notice on Form SD providing an explanatory note that the required disclosure was filed by its parent and the date the parent filed the disclosure. In addition, the parent must note its filing the disclosure on behalf of its subsidiary.	A subsidiary undertaking that is subject to the disclosure requirement must draw up a report for payments to governments that it itself has made; if those payments have not been included in a consolidated report (i.e., if its parent undertaking is not required to prepare consolidated financial statements pursuant to the Accounting Directive and/or is not subject to the laws of a Member State).	Those companies operating in the jurisdiction that has enacted the EITI provisions are required to file.	No, a wholly owned subsidiary is not required to report separately, but must send notification to the appropriate authority that their payments are included in the parent's report within 150 days after the end of its financial year. However, a separate report is required for any payments not included in the parent's disclosure documentation.	Unknown at this stage

	Dodd-Frank Act Section 1504 SEC Rule 13(q)	EU Accounting and Transparency Directive	Extractive Industries Transparency Initiative (EITI)	Canada's Extractive Sector Transparency Measures Act	Australia's Publish What You Pay private senator's bill
Are there penalties for failing to comply with the relevant disclosure or reporting requirement?	While not explicitly stated in the rule, the SEC could suspend and/or revoke a company's registration under Section 13 of the Exchange Act, due to failure to make the required periodic filings with the commission.	Individual Member States may provide for penalties. The UK's implementation makes it a criminal offense for a person to knowingly or recklessly deliver a report that is misleading, false or deceptive in a material particular. If found guilty, the person could be subject to a fine or imprisonment for up to two years (or both).	The EITI criteria do not specifically address penalties, however, the enacting jurisdictions address this.	Yes, the ESTMA contains provisions for penalties for variance offenses.	Unknown at this stage
Are there any other requirements of significance?	Unknown at this stage, pending the reissuance of the SEC rule		All information provided by the extractive industries is published publicly. This includes the results of a reconciliation of payments from companies against government receipts.	Companies must keep records of government payments for a period of no less than seven years.	Unknown at this stage
What other information is required to be disclosed?	Unknown at this stage, pending the reissuance of the SEC rule		The following information is also required to be disclosed within the EITI Report, and is ultimately provided by extractive industry companies: <ul style="list-style-type: none"> ▸ Mandatory and voluntary social payments ▸ Production volumes for each commodity ▸ License registers for the extractive industries ▸ State-owned entities interests in the extractive industries 	For the purposes of verifying compliance, the Minister may require an entity to provide the following information: <ul style="list-style-type: none"> ▸ A list of projects in which it has an interest and the nature of that interest ▸ An explanation of how payments are treated for the purpose of preparing a report ▸ A statement of any policies implemented by the entity for the purpose of meeting its disclosure obligations ▸ The results of an audit of its report or an audit of the records of payments within the financial year 	Unknown at this stage

Note this information was updated as of December 2015.

Key contacts

Global Mining & Metals Tax Leader

Andy Miller

Tel: +1 314 290 1205

andy.miller@ey.com

Extractive Industries Transparency Initiative

Elizabeth Rose

Tel: +1 61 7 3011 3111

elizabeth.rose@au.ey.com

Dodd-Frank Wall Street Reform and Consumer Protection Act

Michael Morris

Tel: +1 216 583 2930

michael.morris@ey.com

European Union Accounting

Salim Amersi

Tel: +44 (0) 20 7951 2134

samersi@uk.ey.com

European Union Accounting

Colin Smith

Tel: +44 (0) 20 7951 7039

csmith7@uk.ey.com

Canada's Extractive Sector Transparency Measures Act

Michael Sabatino

Tel: +1 604 891 8448

michael.sabatino@ca.ey.com

Australia's Proposed Publish-What-You-Pay Act

Basil Mistilis

Tel: +61 8 9429 2258

basil.mistilis@au.ey.com

Global Compliance and Reporting

Charles Chaho

Tel: +1 214 969 8299

charles.chaho@ey.com

Transfer pricing

Sean Kruger

Tel: +1 416 941 1761

sean.kruger@ca.ey.com

Tax policy

Chris Sanger

Tel: +44 (0) 20 79510150

csanger@uk.ey.com

Fraud Investigation and Dispute Services

Ryan Pratt

Tel: +1 713 750 5211

ryan.pratt@ey.com

How EY's Global Mining & Metals Network can help your business

With a volatile outlook for mining and metals, the global mining and metals sector is focused on margin and productivity improvements, while poised for value-based growth opportunities as they arise. The sector also faces the increased challenges of maintaining its social license to operate, balancing its talent requirements, effectively managing its capital projects and engaging with government around revenue expectations.

EY's Global Mining & Metals Network is where people and ideas come together to help mining and metals companies meet the issues of today and anticipate those of tomorrow by developing solutions to meet these challenges. It brings together a worldwide team of professionals to help you succeed – a team with deep technical experience in providing assurance, tax, transactions and advisory services to the mining and metals sector. Ultimately it enables us to help you meet your goals and compete more effectively.

Area contacts

Global Mining & Metals Leader

Miguel Zweig
Tel: +55 11 2573 3363
miguel.zweig@br.ey.com

Oceania

Scott Grimley
Tel: +61 3 9655 2509
scott.grimley@au.ey.com

China and Mongolia

Peter Markey
Tel: +86 21 2228 2616
peter.markey@cn.ey.com

Japan

Andrew Cowell
Tel: +81 3 3503 3435
cowell-ndrw@shinnihon.or.jp

Africa

Wickus Botha
Tel: +27 11 772 3386
wickus.botha@za.ey.com

Commonwealth of Independent States

Evgeni Khrustalev
Tel: +7 495 648 9624
evgeni.khrustalev@ru.ey.com

France, Luxemburg, Maghreb, MENA

Christian Mion
Tel: +33 1 46 93 65 47
christian.mion@fr.ey.com

India

Anjani Agrawal
Tel: +91 22 6192 0150
anjani.agrawal@in.ey.com

United Kingdom & Ireland

Lee Downham
Tel: +44 20 7951 2178
ldownham@uk.ey.com

United States

Andy Miller
Tel: +1 314 290 1205
andy.miller@ey.com

Canada

Bruce Sprague
Tel: +1 604 891 8415
bruce.f.sprague@ca.ey.com

Brazil

Afonso Sartorio
Tel: +55 11 2573 3074
alfonso.sartorio@br.ey.com

Chile

María Javiera Contreras
Tel: +562 2676 1492
maria.javiera.contreras@cl.ey.com

Service line contacts

Global Advisory Leader

Paul Mitchell
Tel: +61 2 9248 5110
paul.mitchell@au.ey.com

Global Assurance Leader

Alexei Ivanov
Tel: +7 495 228 3661
alexei.ivanov@ru.ey.com

Global IFRS Leader

Tracey Waring
Tel: +61 3 9288 8638
tracey.waring@au.ey.com

Global Tax Leader

Andy Miller
Tel: +1 314 290 1205
andy.miller@ey.com

Global Transactions Leader

Lee Downham
Tel: +44 20 7951 2178
ldownham@uk.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2016 EYGM Limited.
All Rights Reserved.

EYG no. ERO294

BMC Agency
GA 0000_D4325

ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com/miningmetals