

January 2015

A Guide to the UK Extractive Industries Transparency Initiative (UK ETI) - Part 2

Impact on Oil & Gas Companies

Introduction

The purpose of this guidance document is to provide UK oil and gas companies with an update to the introduction to EITI contained in the guidance that was issued in June 2014. You can view the introduction to the UK EITI process from:

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320210/Oil_Gas_UK - A Guide to the UK Extractive Industries...pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320210/Oil_Gas_UK_-_A_Guide_to_the_UK_Extractive_Industries...pdf)

On the 22nd May 2013, the Prime Minister announced the UK's commitment to sign up to the Extractive Industries Transparency Initiative (EITI).

The UK's candidacy application was approved by the EITI Board on 15 October 2014. In accordance with the EITI Standard the UK is now required to publish its first report by April 2016.

On the date of the announcement that the UK's candidacy application had been successful, Claire Ralph, fiscal policy manager, Oil & Gas UK commented:

“We are pleased that the UK's application to participate in the EITI has been accepted. We welcome this global scheme to improve transparency in the extractives sector given the very significant contribution our industry makes to the exchequer, and the 450,000 jobs the offshore oil and gas industry supports throughout the UK.”

Peter Mather, BP Group Regional Vice President, Europe & Head of Country, UK also commented:

“As a founding member of the EITI and member of the initiative's board, BP has actively supported the EITI implementation process in the UK. We welcome and support efforts by countries where we operate who choose to work towards EITI implementation, increasing and improving the transparency of revenue flows.”

In an exclusive article in the 2014-15 publication of Oil & Gas UK's Wireline magazine, Business Minister and UK EITI Champion, Jo Swinson MP said:

“We will be asking companies to complete a template setting out the payments made to government for upstream taxes on a ‘cash paid’ basis for the 2014 calendar year. This template should be returned to an independent administrator who will reconcile the figures to the receipts reported by government.”

This update takes account of matters included in the UK’s candidacy application and subsequently considered by the UK EITI Multi-Stakeholder Group (MSG). It also contains important information on HMRC’s administration of UK corporation tax payments and how to use existing arrangements to assist EITI.

1. What does the UK’s successful EITI candidacy application mean for UK oil and gas companies?

The UK government has committed to publish its first EITI report by April 2016. The report will be compiled by an Independent Administrator who will be appointed after the completion of a selection process that will follow relevant government procurement procedures. The Independent Administrator will obtain information on certain payments that are made to the UK government by oil & gas and mining companies that exceed the agreed materiality threshold (£86,000).

Companies will be asked to provide information on the payments that they made during the 2014 calendar year. The Independent Administrator will also ask the relevant government department or agency to provide information on the payments that it received from oil & gas and mining companies. The Independent Administrator is then required to reconcile the information received and publish the report.

The payment types to be included in the UK EITI Report are:

- Corporation Tax (mining companies only)
- Ring Fence Corporation Tax and Supplementary Charge (oil & gas companies only)
- Petroleum Revenue Tax (oil & gas companies only)
- Petroleum Licence Fees (oil & gas companies only)
- Payments to the Crown Estates Commissioners relating to UK extractive activities
- Payments to the Coal Authority relating to UK extractive activities (mining companies only)

It is likely that the report will not include any interest or penalties relating to any of these payments. However, this matter is still under discussion with the MSG.

Companies will also be asked to provide beneficial ownership information to the Independent Administrator for inclusion in the EITI Report. Further work is required to determine what information companies will be asked to provide.

Finally, the contextual section of the EITI Report will include information on production forecasts, reserves and resources estimates, and aggregate industry costs and expenditure over five years.

2. When will companies be impacted by UK EITI?

Once appointed, the Independent Administrator will issue a template to UK oil & gas and mining companies requesting payment information for the 2014 calendar year. The template should be returned to the Independent Administrator by a set deadline (expected to be 3 months later).

3. Which organisation will issue the information requests to companies and the relevant government departments?

The Independent Administrator will be a professional services firm with the required skills and experience to perform the reconciliation process. This firm will be appointed during the 1st quarter of 2015 and its identity will be communicated in a later UK EITI update.

4. What information will companies be asked to provide?

Payment Information

Oil and gas companies will be asked to confirm the amounts paid in cash during the 2014 calendar year for each of the payment types listed in 1 above. For the purposes of the reconciliation, but not for inclusion in the published UK EITI report, they will also be asked to confirm the total amount of any non-ring fence payments (Non Ring Fence Corporation Tax and any interest or penalties) made in that year. See point 7 below for further information on the reconciliation process.

Beneficial Ownership Information

The details of what companies will be asked to provide are being developed by a sub-group that will make recommendations to the UK EITI MSG during the first quarter of 2015. Broadly speaking, companies will be asked to provide information on any individuals that have a material influence on the company through their shareholding in the company. Companies that are members of a group for which the parent is listed will only be asked to confirm that listed status. The approach is expected to be aligned with forthcoming UK legislation that is being developed by the Department for Business, Innovation and Skills.

5. Are the relevant government departments permitted to provide information on company payments to the Independent Administrator?

HMRC is developing a standard draft taxpayer confidentiality waiver that companies will be asked to sign. This will enable HMRC to provide to the Independent Administrator certain payment information that would otherwise be considered to be taxpayer confidential. This waiver might also apply to relevant payments made to the Crown Estates Commissioners and the Coal Authority.

The Department of Energy and Climate Change is not subject to an equivalent confidentiality restriction in relation to its receipt of licence fees and will therefore be able to provide the relevant information on its receipts from licensees to the Independent Administrator without the need for completion of a similar confidentiality waiver.

6. What are the responsibilities of the Independent Administrator and how will this impact companies?

The Independent Administrator is required to reconcile the payment information provided by companies with the information on government receipts provided by the relevant government departments or agencies. If there are any differences in the amounts reported the Independent Administrator will make enquiries of both parties in order to reconcile those differences. The Independent Administrator is required to include commentary on the reconciliation process in the published report.

7. UK Corporation Tax - Payment Arrangements

The UK EITI Report will include information on Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC) payments and repayments. The published reports will not include information on Non Ring Fence Corporate Tax (N-RFCT) payments and repayments as they do not relate to UK extractive activities and are therefore outside the scope of UK EITI.

It is likely that the report will also not include any interest or penalties relating to RFCT (and SC) paid in the year but this is still under discussion with the MSG. An update on how to deal with interest or penalties relating to RFCT (and SC) will be issued later in the 1st quarter of 2015.

Companies that make payments of RFCT (and SC) and N-RFCT may make a consolidated payment to HMRC under a Group Payment Arrangement (GPA) or they may make their payments at individual company level (whether by instalments or otherwise). As there is no requirement for the payments of RFCT (and SC) to be separately identified, it is not currently possible for HMRC to establish how much of each cash payment relates to RFCT (and SC), and how much is a non-ring fence payment, at the time the payment is made.

After considering a range of options, the UK EITI MSG, which includes representatives from industry and HMRC, has endorsed an optional arrangement (using existing procedures) to the administration of UK corporation tax payments where payments of RFCT (and SC) and N-RFCT are made by companies within the scope of EITI. This approach has also been informally endorsed by the EITI International Secretariat.

From 1 January 2015, if the amount to be paid to HMRC relates either wholly or in part to N-RFCT, an option to make a separate payment of that element, including interest and/or penalties arising thereon, and to notify HMRC that the payment is N-RFCT at the time the payment is made, will be available.

If a company does not make a separate payment of N-RFCT and send this notification, HMRC will assume that the full amount relates to RFCT and SC and will classify the payment accordingly in its report to the Independent Administrator. If a company later establishes that it has made an administrative error, and the amount classified separately was incorrect, the company can inform HMRC what the N-RFCT payment should have been and HMRC will also pass that information to the Independent Administrator.

Where a repayment is due, HMRC will continue to make consolidated repayments of RFCT (and SC) and N-RFCT. HMRC will report such consolidated repayments to the Independent Administrator. Where it is clear from the tax position of the company at the time when the repayment is made that the repayment relates wholly to N-RFCT, that repayment will be reported to the Independent Administrator for the purposes of the reconciliation, but not for inclusion in the report.

Companies that make separate payments should use the following e mail address to inform HMRC.
eti.lblondon@hmrc.gsi.gov.uk

8. Update on EU Accounting Directive and the Transparency Directive

The requirements on the reporting of payments to governments contained in the EU Accounting Directive (2013/34/EU) were enacted into UK law on 1 December 2014 in The Reports on Payments to Governments Regulations 2014 (the UK Government Payment Regulations).

Broadly speaking, large or listed UK registered oil and gas companies will be required to submit information on the payments that they and any subsidiary companies make to national, regional and local governments on a country by country and project by project basis. The first reporting period will cover payments made in company financial years that commence after 1 December 2014 i.e. 2015 for companies that prepare financial statements on a calendar year basis. Reports have to be submitted to Companies House within 11 months of the end of the company's financial year.

Regulations were also enacted in December 2014 to give effect to changes to the EU Transparency Directive. The primary effect of these changes is to extend the requirements of the UK Government Payment Regulations to companies that are not UK registered but which are listed on any UK stock exchange. An additional consequence is that the reporting deadline for the submission of reports prepared in accordance with the UK Government Payment Regulations 2014 is advanced to the end of June for all UK listed companies.

You can view further information on the UK Government Payment Regulations, including a copy of a draft industry guidance document from:

<https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>

The UK EITI MSG is making every effort to align the approach to reporting of UK payments under UK EITI with the requirements of the UK Government Payment Regulations 2014.

Contacts

Government

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For more information on the EU Accounting Directive, please contact Maureen Beresford on 0207 215 3342 maureen.beresford@bis.gsi.gov.uk

Industry

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