Government of Canada / Gouvernement du Canada

Extractive Sector Transparency Measures Act

Guidance

Canada

Government of Canada | Gouvernement du Canada

Extractive Sector Transparency Measures Act

Guidance

Canada

Cat No. M34-28/2-2016E-PDF
ISBN 978-0-660-04478-1

Aussi disponible en français sous le titre :
Loi sur les mesures de transparence dans le secteur extractif –
lignes directrices

Contents

Foreword

The *Extractive Sector Transparency Measures Act* (the Act) was enacted on December 16, 2014, and brought into force on June 1, 2015. This Act delivers on Canada's international commitments to contribute to global efforts to increase transparency and deter corruption in the extractive sector. The Act requires extractive entities active in Canada to publicly disclose, on an annual basis, specific payments made to all governments in Canada and abroad.

The Act applies to entities that are subject to Canadian law and engaged in the commercial development of oil, natural gas or minerals. The payments that will be reported are those of $100,000 or more and within specific categories of revenue streams commonly associated with exploration and extraction of oil, natural gas or minerals. Payments will be required to be reported on project level basis, where possible.

The intent is to proceed on the basis of the legislation alone. However, the Act does allow for the introduction of regulations that may be pursued if it becomes evident that the implementation of the Act would require a regulatory framework.

Canadian extractive companies already operate in a transparent and responsible manner and the Act reinforces Canada's leadership by aligning with high international transparency standards. Given this alignment with reporting requirements in other jurisdictions, the Act provides a level playing field for companies operating domestically and abroad. The Act is designed to increase transparency and includes a substitution provision to minimize the reporting burden for Reporting Entities with similar obligations in multiple jurisdictions.

Canadians will benefit from increased efforts to strengthen transparency in the extractive sector, both at home and abroad. Alongside Canada, the United States and European Union countries have put in place similar public disclosure requirements for their respective extractive industries. Together, these reporting systems will contribute to raising global transparency standards in the extractive sector.

Introduction

This *Guidance* has been developed to help businesses in the exploration and extractive sectors understand the requirements of the *Extractive Sector Transparency Measures Act*. It may also be useful to the general public to understand the type of information that is required to be reported under the Act.

The *Guidance* provides general information on areas such as:

- The scope of commercial development of oil, gas and minerals.
- What entities are subject to the Act.
- What entities must report payments under the Act.
- What types of payments should be reported under the Act.

This *Guidance* is not intended to be prescriptive, but rather practical and illustrative. It does set out information and expectations for reporting. Examples provided in the *Guidance* are not intended to be exhaustive. Users are responsible for determining whether and how the Act's provisions apply to them and for ensuring compliance in light of the facts and circumstances of their operations. This *Guidance* is not intended to replace legal advice. For the purposes of interpreting and applying the law, users are encouraged to consult the official version of the *Extractive Sector Transparency Measures Act*, as well as the *Technical Reporting Specifications* available on the Government of Canada website.

Natural Resources Canada (NRCan) may amend any of the information in this *Guidance* as required. NRCan will make reasonable efforts to inform Reporting Entities of changes, depending on the nature of such amendments.

1. Commercial development of oil, gas and minerals

Commercial development of oil, gas and minerals ("commercial development") captures two categories of activities:

- The exploration or extraction of oil, gas or minerals.
- The acquisition or holding of a permit, licence, lease or any other authorization to carry out any exploration or extraction of oil, gas or minerals.[1]

Exploration or extraction refers to the key phases of commercial activity which occur during the life cycle of an oil, gas or mineral project. These extend from prospecting and exploration for oil, natural gas or minerals to the closure, remediation and reclamation of a project. Exploration or extraction is not limited to only active phases of operations on the ground, but also captures temporary periods of inactivity. For example, commercial development does not end with the completion of a seasonal exploration program and only begin again with the next seasonal program.

The acquisition or holding of a permit, licence, lease or other authorization is intended to capture the permitting process, including, for example, application for permits and undertaking of community consultations that will comprise or inform any such application.

Commercial development is not intended to extend to ancillary or preparatory activities for the exploration or extraction of oil, gas or minerals. For example, activities such as manufacturing equipment or construction of extraction sites would not be included.

Commercial development generally does not include post-extraction activities. Refining, smelting or processing of oil, gas or minerals, as well as the marketing, distribution, transportation or export, is generally not captured as commercial development for the purposes of the Act. However, certain initial processing activities are often integrated with extraction operations and may comprise commercial development of oil, gas or minerals.

The scope of commercial development impacts upon who must report and what payments must be reported.

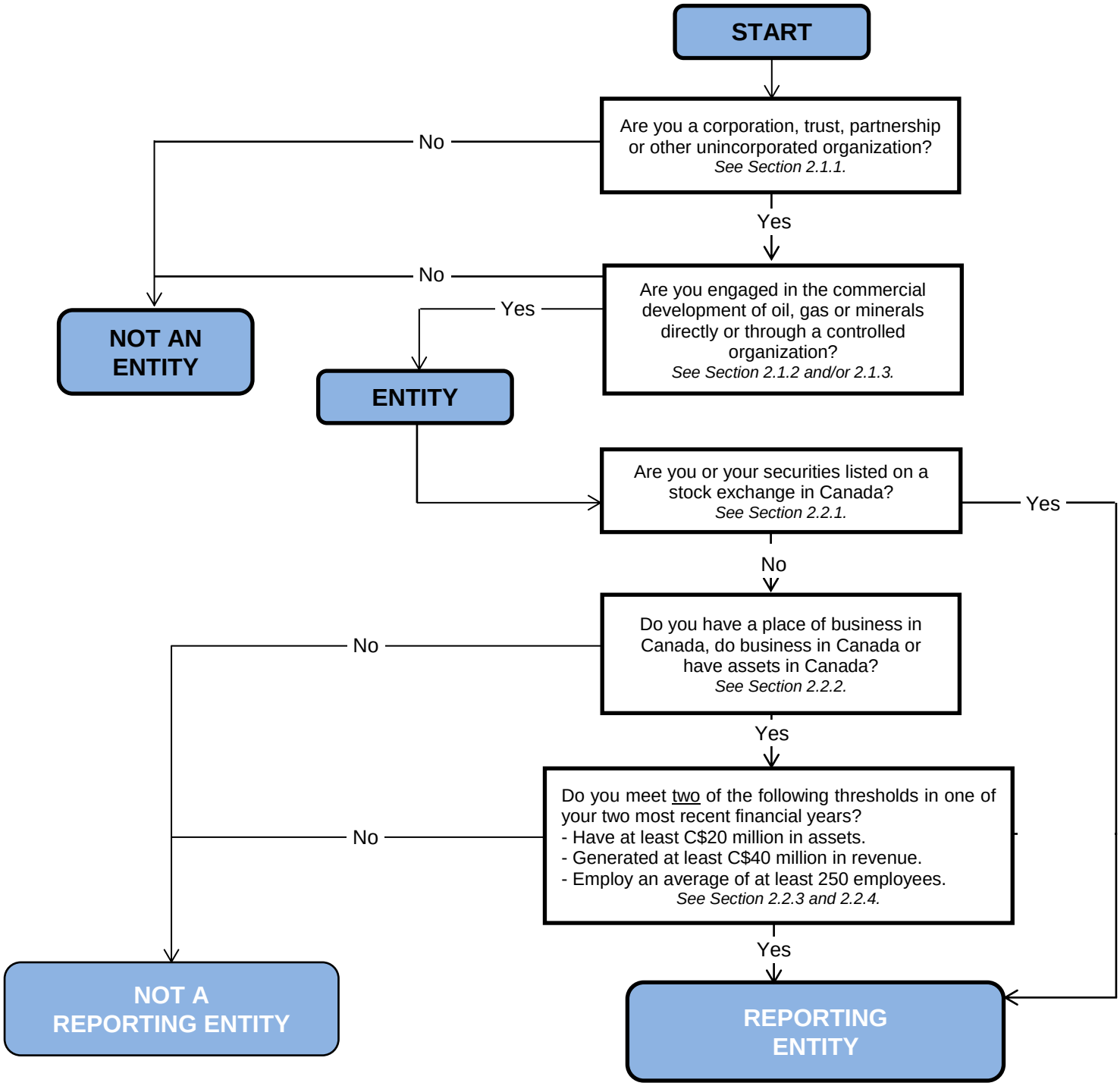
[1] *Extractive Sector Transparency Measures Act*, S.2 "commercial development of oil, gas or minerals"

2. Application of the Act

To help determine whether your business is subject to the Act's requirements, the flow chart on the next page highlights the questions you should consider.

The Act does not have extra-territorial application to businesses that are not subject to Canadian law. Businesses that are not subject to Canadian law, but may have subsidiaries operating in Canada, are not subject to the Act by virtue of their ownership of or interests in any Canadian subsidiary businesses, even if the subsidiary itself is a Reporting Entity.

EXTRACTIVE SECTOR TRANSPARENCY MEASURES ACT
APPLICATION FLOWCHART



2.1 Entity

An entity is 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.

  OR

- 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.

Only a business that is an Entity for purposes of the Act can be required to report payments under the Act. However, merely being an Entity under the Act does not automatically mean that a business will have to report payments. Your business must also be a Reporting Entity to be required to report payments under the Act.

If your business qualifies as an Entity – even if it is not currently required to report payments – it remains important to be aware of the obligations that come with Entity status. Should an Entity become a Reporting Entity at any point in its financial year, it will be required to report on all payments made within that year, even if it did not begin the year as a Reporting Entity.

In addition, the Act's enforcement and compliance provisions apply to all businesses that are Entities. For example, the Minister of Natural Resources has the authority to request an audit from any Entity that meets the definition of "entity" set out in section 2 of the Act.

2.1.1 Are you a specified type of business enterprise under the Act?

Corporations, trusts, partnerships or other unincorporated organizations are the types of business enterprises that may constitute Entities under the Act.

These four categories of enterprises are intended to be broadly interpreted and extend to similar forms of business organizations, both within and outside Canada. For example, these categories include unlimited liability corporations, limited partnerships and royalty trusts. Further, foreign corporations, trusts, partnerships or unincorporated entities, in whatever form, may be Entities subject to the Act. The Act may also apply to business organizations that are owned or controlled by domestic or foreign governments (e.g. crown corporations or state-owned enterprises).

Individual natural persons and sole proprietorships are not captured within the classes of enterprises that may be Entities under the Act (e.g. a farmer who personally owns farmland on which oil production occurs).

2.1.2 Are you engaged in the commercial development of oil, gas or minerals?

To qualify as an Entity under the Act, a business must be engaged in the commercial development of oil, gas or minerals. The scope of commercial development is referenced in Section 1 of this *Guidance*.

Whether a business is involved in commercial development will depend on the specific facts and circumstances. Businesses themselves are in the best position to make a reasonable determination of whether the activities they undertake fall within the scope of commercial development.

There may be many businesses that provide goods and/or services associated with or related to commercial development. It is likely that such businesses would not be Entities under the Act because the activities they perform are outside the scope of commercial development. Similarly, contractors that provide goods or services associated with or in relation to commercial development of oil, gas or minerals by a business that holds the principal permit, licence, lease or other authorization to carry out such activities would not be considered to be Entities by virtue of their contractual arrangements with a Reporting Entity.

2.1.3 Do you engage in the commercial development of oil, gas or minerals through control of another business enterprise?

Even if your business is not itself directly engaged in the commercial development of oil, gas or minerals, it is an Entity for purposes of the Act if it controls a corporation, trust, partnership or other unincorporated organization that is engaged in such development and is not an entity in its own right.

This will be the case whether the controlled business is engaged in commercial development in Canada or in a foreign jurisdiction. For example, if a corporation that is subject to Canadian law controls an Australian partnership (not an Entity subject to the Act) that is engaged in the commercial development of oil in Australia, the controlling Canadian corporation is an Entity for purposes of the Act.

Control for purposes of the Act is not limited to direct control. It also extends to indirectly controlled businesses down an organizational chain (e.g. a business that is controlled by another controlled business). In addition to corporate subsidiaries, other types of business enterprises, such as partnerships, trusts and unincorporated organizations, also can be subject to control.

Where one business controls another enterprise under the accounting standards applicable to it (e.g. under International Financial Reporting Standards [IFRS] or US Generally Accepted Accounting Principles [GAAP]), that will generally be sufficient evidence of control for purposes of the Act.

2.2 Reporting Entity

An Entity that is subject to the Act will be required to report payments (in this *Guidance*, we refer to such a business as a "Reporting Entity") in either of two circumstances:

- If the Entity or the Entity's securities are listed on a stock exchange in Canada.

  OR

- If the Entity has a place of business in Canada, does business in Canada or has assets in Canada:

  AND

- Meets two of the three following minimum thresholds ("**size-related criteria**") in one of its two most recent financial years:

    - Has at least C$20 million in assets.
    - Generated at least C$40 million in revenue.
    - Employs an average of at least 250 employees.

These two tests above are exclusive of one another. For example, an Entity with common shares listed on the TSX Venture Exchange will be a Reporting Entity, even if it does not have a place of business in Canada or does not meet any of the size-related criteria.

2.2.1 Are you or your securities listed on a stock exchange in Canada?

A business' securities, for purposes of the Act, are to be broadly construed and will include any "security" as defined under Canadian provincial and territorial securities legislation.

A stock exchange in Canada for purposes of the Act includes any exchange in Canada recognized or exempted under Canadian provincial securities legislation and that is regulated under National Instrument 21-101 - *Marketplace Operation* or National Instrument 23-101 - *Trading Rules*.

2.2.2 Do you have a place of business in Canada, do business in Canada or have assets in Canada?

Entities whose securities are not listed on a stock exchange in Canada must still report under the Act if they have a place of business in Canada, do business in Canada or have assets in Canada and meet two of the three size-related criteria in one of its two most recent financial years. The assets to be considered for purposes of Section 2.2.2 of the *Guidance* <u>are limited</u> to Canadian assets.

In most cases, it will be obvious whether an Entity has a place of business in Canada, does business in Canada or has assets in Canada.

2.2.3 Applying the size-related criteria - calculation of assets and revenue

In applying the size-related criteria, the following approaches should be taken.

- **Based on financial statements.** C$20 million in assets and C$40 million in revenue tests are based on figures reported in an Entity's consolidated financial statements in one of its two most recent financial years.

- **Gross basis.** Assets should be calculated on a gross basis, not net.

- **Global assets and revenues.** Assets and revenue in the size-related criteria are not restricted to assets or revenue in Canada or to assets and revenue from the commercial development of oil, natural gas or minerals. A business should include all global assets and revenues in determining whether the size-related criteria are met.

- **Exclude parent entities.** Global assets and revenues for the size-related criteria analysis only relate to the Entity itself and its global operations based on its consolidated financial statements. They do not include the global assets and revenues of a parent company.

- **Currency.** Where the currency of the consolidated financial statements is not Canadian dollars, assets and revenues should be converted into Canadian dollars for purposes of these tests using the Entity's method of reporting transactions in foreign currencies in its financial statements.

2.2.4 Calculation of the number of employees

For purposes of the size-related criteria, the 250 employees test should be based on the average of all employees of the Entity over each of its two most recent financial years. Employees include people residing or employed in Canada as well as in any other jurisdiction. Employees also include full-time, part-time or temporary employees. Independent contractors, however, do not constitute employees. Entities should refer to the Canadian common law definition of an employee for purposes of applying the size-related criteria.

3. Payments

3.1 Reportable payments

A payment under the Act is one that, in a financial year,

- Is made to the same payee.
- Is made in relation to the commercial development of oil, gas or minerals, as set out in the Act.
- Totals, as a single or multiple payments, C$100,000 or more within **one** of the following seven categories:

    - 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 to payees as ordinary shareholders).
    - Infrastructure improvement payments.

3.2 Payee

For purposes of the Act, a payee is:

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 other authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of a government for a government referred to in paragraph (a) above or a body referred to in paragraph (b) above.

Payees include governments at any level, including national, regional, state/provincial or local/municipal levels. Payees include Crown corporations and other state-owned enterprises that are exercising or performing a power, duty or function of government. It is less likely that a state-owned enterprise operating outside its home jurisdiction would be exercising or performing a power, duty or function of government and levy payments on reporting entities.

However, reporting entities will have to examine the facts and circumstances of payments made to state-owned enterprises to determine whether they may constitute a reportable payment. An important factor will be whether, in regard to particular payments made to the state-owned enterprise by a reporting entity, the state-owned enterprise is engaging in commercial activity or is exercising or performing a power, duty, or function of government.

Reporting Entities will need to consider the facts and circumstances to determine whether a particular organization or institution meets the criteria of a payee, as set out in the Act. They will also need to consider whether a payment to a particular payee is reportable depending on the facts and circumstances of the payment. Reporting Entities may wish to consider how the payment in question relates to the powers, duties and functions of a particular government. For example, if a payee is responsible to enforce a bylaw that necessitates levying of a fee or other types of payments, then this is likely to be a reportable payment.

3.3 Deferral of the requirement to report payments to Aboriginal governments in Canada

Aboriginal and indigenous groups and organizations within Canada and in other jurisdictions may be regarded as governments for purposes of qualifying as a payee under the Act. However, the Act defers the requirement for Reporting Entities to report on payments made to Aboriginal governments in Canada until two years after the Act comes into force, beginning on June 1, 2017. There may be cases where a payment is due to an Aboriginal government but is collected by another body or government. For the purposes of the deferral, such payments do not have to be reported at this time.

From June 1, 2017, Reporting Entities must include payments made to Aboriginal governments in Canada in their reports. For example, a Reporting Entity with a financial year beginning on January 1 would not report on such payments made prior to June 1, 2017. Payments made following June 1, 2017, should be reported for the 2017 financial year.

3.4 Same payee

Payments by a Reporting Entity to the "same payee" that meet or exceed C$100,000 in ***one*** *category of payment by a Reporting Entity* must be disclosed under the Act.

For purposes of determining whether a series of payments constitute payments to the same payee under the Act, Reporting Entities must group together departments, ministries, trusts, boards, commissions, corporations, bodies or other authorities that perform or are established to perform a power, duty or function on behalf of a particular level (e.g. national, regional, municipal, local authority) of government, recognizing there are many forms and manners or organizing governments globally.

For purposes of disclosing such payments in the report, Reporting Entities are encouraged, where practical, to list the name of the department, agency or entity of the payee that received the payment, if more than one such body of a payee received a payment from the Reporting Entity.

For example, if several fee payments are made to the National Energy Board, Environment Canada and NRCan (which are all Canadian federal bodies) that add up to C$150,000 in a year, a fee payment of $150,000 would be reportable. If possible, the report would note three separate payments made to the National Energy Board, Environment Canada and NRCan.

Further details on how payments are to be disclosed in the report are available in the *Technical Reporting Specifications* that can be accessed through the Government of Canada website.

3.5 Payment categories

Payments that fall outside of the seven categories listed above do not need to be reported under the Act.

Entities should look to the substance, rather than the form, of payments in determining which category is applicable. For example, facts and circumstances may indicate that a philanthropic or voluntary contribution was made to a payee in lieu of one of the payment categories that would need to be reported under the Act. In such a case, the onus is on the Reporting Entity to determine whether a voluntary or philanthropic payment does in fact relate in some way to its commercial development of oil, gas or minerals. This may include payments made for corporate social responsibility purposes.

In all cases, reported payments must meet the criteria of reportable payments as described in Section 3.1 of this document, especially that the recipient must be a payee.

A Reporting Entity must report on all payments made by:

- The Reporting Entity.
- Any entity controlled by the Reporting Entity.

It is the responsibility of the Reporting Entity to determine in which categories their payments fall. In some cases it may be unclear whether a payment should be reported under one category or another. For example, a mineral royalty payment may be considered a tax, a royalty or perhaps both. In these

cases Reporting Entities should use their reasonable judgement. However, Reporting Entities should not artificially structure their payments to avoid the reporting regime.

A brief overview of the payment categories follows. In addition, Box A includes illustrative examples of reportable and non-reportable payments. These are meant to convey some potential factors Reporting Entities may need to consider when they are determining whether a particular payment is reportable or not.

Taxes

The tax category is intended to capture income, profit and production tax payments of a Reporting Entity in relation to the commercial development of oil, gas or minerals. This does not include consumption and personal income taxes. Withholding taxes (i.e. taxes remitted to a government by a Reporting Entity on behalf of a third party) do not have to be reported, as these would not constitute a tax liability of the Reporting Entity.

The term "tax" generally means any type of government charge that is enforceable by law, imposed under statutory authority, levied by a public body and intended for a public purpose. Any government charge that meets these requirements is a tax.

A consumption tax is a tax on the consumption or use of goods or services. Typical examples include sales tax, goods and services tax, harmonized sales tax, motor fuel tax, value-added tax and use tax. Consumption taxes, even if they relate to the commercial development of oil, gas or minerals, are not payments. Carbon taxes, depending on their design, could be seen as a consumption tax, but will need to be assessed by the Reporting Entity based on the facts and circumstances.

Examples of taxes that would be reportable under the Act include:

- income and profit taxes
- capital gains taxes
- capital taxes
- mining taxes
- windfall profits taxes
- resource surcharges
- petroleum revenue taxes

In addition to considering the characteristics of the tax, it is also necessary for Reporting Entities to keep in mind whether the tax was paid in relation to the commercial development of oil, gas or minerals. For example, it is unlikely that a tax levied on interest income would be considered to be paid for commercial development activities. On the other hand, a tax that was directly calculated with references to levels of gas production is likely to be classified as a production tax.

Similarly, a Reporting Entity leases office space in a city and pays property tax to that municipality. That payment, while a tax, does not relate to commercial development activities that the Reporting Entity is conducting, so would not be required to be reported. However, some property taxes may relate to commercial development of oil, gas or minerals. For example, property taxes on a building on an extraction site would be a reportable payment.

Reporting Eentities should report the amount of taxes paid to each payee in a financial year.

Royalties

Cash royalties to payees should not be difficult to categorize or calculate. Royalties paid in kind, however, should be treated in the same manner as other in kind payments.

Fees

The category of fees is substantively broad as set out in the Act. It does not matter whether a payment, whether in cash or in kind, is characterized as a fee or not. If the payment accomplishes the same purpose in substance as a fee, it should be reported as a fee. This category is not meant to include amounts paid in ordinary course commercial transactions in exchange for services provided by governments or government-owned entities. For example, payments made to a state-owned utility for electricity used by its extraction operations is not likely to be a payment.

Production entitlements

A payee's share of oil, gas or mineral production under a production sharing agreement or similar contractual or legislated arrangement should be categorized as a production entitlement under the Act. Often production entitlements are paid on an in-kind basis. Reporting Entities should report the cash value of the production entitlements received by a payee during the relevant financial period. Volumes of production entitlements paid do not have to be reported.

Bonuses

Signing, discovery, production and any other type of bonuses paid to a payee in relation to the commercial development of oil, gas or minerals must be reported under the Act. A payment that is not termed a "bonus," but which in substance is a bonus payment, is reportable.

Share issuances by a Reporting Entity to a payee that are required by law or as consideration for the issuance of a license, permit or concession are a typical example of an in-kind bonus.

Dividends

Dividends paid to a payee as an ordinary shareholder do not need to be reported under the Act, so long as the:

- Shares have been acquired by the payee for consideration on the same terms as were available at the time of acquisition to other shareholders.

- Dividend is paid to the payee on the same terms as to other shareholders.

Dividends that are paid to a payee on shares received in lieu of a bonus, production entitlements, royalties or any other payment category, on the basis of concessional terms, for example, are likely to be reportable.

Infrastructure improvement payments

As with all other payment categories, a payment in this category must be a payment made to a payee, whether monetary or in kind. Reporting Entities that make infrastructure improvement payments to a payee, whether under contractual obligations or otherwise, should report such payments.

For example, if the company is obliged by a payee to build a road or a sewage system, other than in circumstances where the road or sewage system is expected to be primarily dedicated to operational activities throughout its useful life, the Reporting Entity may be required to disclose the cost of building the road or sewage systems as a payment to the payee.

The Reporting Entity will need to identify the appropriate period in which to report the infrastructure improvement payment:

- The period in which that payment was made by the Reporting Entity.
- When the infrastructure is handed over to the government.
- When the infrastructure is brought into use.

Such considerations should be based on the facts and circumstances of the payment.

The intent is not to capture infrastructure improvement payments that relate primarily to the operational purposes of a Reporting Entity (i.e. building a road to access an extraction site that is primarily for operational needs).

Box A. Illustrative examples of reportable and non-reportable payments

A Canadian firm is engaged in natural gas operations in Western Canada and oil development projects in a foreign country. As part of preparations of its annual report, the firm reviews the various payments it has made in relation to its commercial development of oil and natural gas:

- Corporate income taxes exceeding $100,000 in the reporting year have been paid separately to the governments of Canada and Alberta and a foreign government. These payments are all required to be reported as separate payments since they are made to different payees. Since they are not associated with a specific project, the Reporting Entity should not report these payments at the project level.
- The firm decides that it requires security services. Payments have been made to the foreign country's army for the provision of security at an oil extraction site. Since the army is providing a service, this payment is treated as a commercial transaction and is not required to be reported.
- The Reporting Entity has several lease holdings in Western Canada. It has hired a lease management company in Alberta to manage these lease holdings on its behalf and discharge any legal payments associated with these lease holdings. For one lease holding, the local government charges a quarterly fee of $30,000, which the lease management company pays for the Reporting Entity. The Reporting Entity reports a fee payment to the local government of $120,000 in its report. Since this payment is attributed to a specific project, the Reporting Entity must disclose this payment at the project level.

- The Reporting Entity participates in a joint arrangement in which a foreign state-owned enterprise acts as the operator, and payments are made to the operator pursuant to the joint arrangement agreement. Such payments include, among other things, the Reporting Entity's share of capital and operating cash calls. The Reporting Entity is not required to report these payments made to the operator because the foreign state-owned enterprise is acting in the capacity of a commercial partner rather than a party exercising or performing a power, duty or function of government.
- A signing bonus of $500,000 is paid by the Reporting Entity to an Aboriginal band council in Alberta for providing access to resources on traditional land. The payment is received by the Economic Development Board, a private entity that is owned by the Aboriginal band council to negotiate on its behalf with the oil and gas industry. Since the Act does not require reporting of such payments until June 1, 2017, the payment is not reported. A similar signing bonus is anticipated to be paid in the same manner in November 2017, and the Reporting Entity understands this payment will need to be reported in its report for that year.
- The Reporting Entity builds a lease access road use for its own use. The road is decommissioned at the end of the lease term. The road related primarily to the Reporting Entity's operational use during its useful lifetime, and there is no payment made to a government since the road no longer exists when the lease is concluded.
- The Reporting Entity also builds a permanent electrical supply and distribution system. At the end of the 30-year lease term, the ownership of the electrical supply and distribution system is to be transferred to the local municipal government. This should be reported as an infrastructure improvement payment at the time of the transfer and follow the in kind payment requirements under the Act.
- The Reporting Entity has provided a local municipal government with an endowment of $3 million to run a scholarship program for local youth, as well as $4 million to build a community centre. These payments are related to the Reporting Entity's commercial development of gas and are reportable. The Reporting Entity includes these payments under the bonus payment category in their report.

3.6 Reporting payments made in situations of joint control

NRCan understands that there may be situations where joint control exists; that is, where no one business solely controls a business arrangement that includes two or more partners. NRCan also understands that there are many ways in which businesses structure joint arrangements to conduct their business.

In situations of joint control, the Reporting Entities involved should consider the key requirements of the Act, as they would with regard to any payment:

- If a Reporting Entity makes a payment, they must report it. This could be a payment made as an operator of a joint arrangement or as a member of a joint arrangement.
- If a payment is made by an entity that is not subject to the Act but is controlled by a Reporting Entity, the Reporting Entity must report it. The entity (not subject to the Act) may be making the payment as an operator or may be making the payment as a member of a joint arrangement.

Payment attribution rules set out in the Act may apply in situations of joint control. Reporting Entities should consider the facts and circumstances of payments when determining whether to report and which payments to report in situations of joint control.

3.7 Attribution of payments

The Act sets out clear rules regarding the attribution of payments that address situations where either a Reporting Entity does not make the payment directly to a payee or a payment is not received directly by a payee. Reporting Entities should carefully consider these rules when determining which payments made to a payee must be included in its report. Box B includes illustrative examples of when payments may or may not be attributed to a Reporting Entity.

Box B. Illustrative cases of payment attribution to a Reporting Entity

- A property management company (Alpha) is contracted by a reporting entity to manage a leased property. Alpha makes payments to the local municipality government that relate to the holding of the lease by the Reporting Entity. In this case, the Reporting Entity would be required to report the payments made by the service provider, as those were made "for" the Reporting Entity, relating to its holding of a lease for that property.
- A Reporting Entity contracts with engineering, procurement and construction (EPC) companies for the construction of a plant. An EPC firm makes payments to governments for building permits, and other fees that relate to the construction of the facility. Since those payments do not relate to the extraction activities of the Reporting Entity, the Reporting Entity would not be required to report the payments.
- A Reporting Entity contracts the operation of a mine to a service provider. The service provider pays environmental taxes levied on that facility to the government. These payments relate to the extraction activity of the Reporting Entity, and so the Reporting Entity would be required to report those payments.

4. Substitution

Assessment to determine substitutability of another jurisdiction's reporting requirements will be undertaken once such legislative measures are in place. The substitution authority allows for the determination that the reporting requirements of the other jurisdiction are an acceptable substitute for the reporting requirements, as set out in section 9 of the Act. This does not mean that another jurisdiction's requirements must be identical to those in the Act, but the other jurisdiction's requirements must have the ability to achieve the purpose of the Act: to deter corruption through the systematic public reporting of specific payments to all levels of government.

Assessment of requirements for substitution determination focuses on whether the key reporting obligations align with the reporting obligations (e.g. annual reporting, payment categories, project- and payee-level breakdown of payments).

Recognizing that some other jurisdictions' requirements may not constitute an acceptable substitute, the Act provides authority to impose additional conditions on Reporting Entities that wish to employ the substitution determination. Conditions could be substantive, to address significant gaps in reporting in other jurisdiction's requirements, or administrative in nature, to ensure that a Reporting Entity notifies NRCan of its intent to make use of substitution determination.

General instructions on how a reporting entity may use substitution are included in the *Technical Reporting Specifications*, which can be accessed through the Government of Canada website.

5. Additional considerations

Reporting Entities have the responsibility to meet the obligations set out in the Act and should consider what actions they should take to ensure they are able to meet their obligations. NRCan understands that different entities will take various actions, depending on their particular circumstances.

Reporting Entities may consider different types of action in order to ensure they have the capabilities in place to meet the obligations. Not all actions may be required to be taken, but could include approaches such as putting in place appropriate data collection systems, ensuring awareness of obligations within the Reporting Entity's corporate structure and appropriate types of training, if necessary.

The Government of Canada continues to monitor risks of potential conflict between the Act and laws or other measures in foreign jurisdictions that may hinder reporting. While no such laws have been identified to date, Canada has held discussions with countries of interest to signal that, like other major economies, it has adopted legally binding requirements to report payments.

Should Reporting Entities encounter challenges in meeting the reporting requirements, they may provide details of these circumstances to NRCan.

The Government of Canada will continue to assess any risks and engage directly with jurisdictions where measures exist that may raise concerns regarding the application of this legal requirement. Since similar measures will be in place in many other jurisdictions, such engagement may be undertaken with other international partners.