

Canada Tables *Extractive Sector Transparency Measures Act* – Mandatory Reporting of Payments to Aboriginal Governments

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Mandatory disclosure of payments made to Aboriginal communities from companies in the oil, gas and mining sectors will likely soon become a reality. On October 23, 2014, the federal government tabled the Extractive Sector Transparency Measures Act as a measure under omnibus Bill C-43. If passed, the Bill will alter the current practice of confidential negotiated agreements between resource companies and Aboriginal communities about exploration and resource extraction in their traditional territories. The Bill would require extractive companies in Canada to begin reporting payments made to Aboriginal governments two years after the legislation comes into force.

The changes in the Bill reflect a commitment made by the federal government in Britain in June 2013. The move is also supported by groups such as the Prospectors and Developers Association of Canada (PDAC), Publish What You Pay Canada and the Revenue Watch Institute. (See our earlier [article on mandatory disclosure of payments](#) from February 2014.)

The proposed legislation has, however, raised concerns among First Nations, which question the federal government's failure to consult them before introducing the Bill.

A summary of key provisions respecting the mandatory reporting requirements is provided at the end of this article.

Potential Impact of the Legislation

This legislation will likely affect legally binding impact benefit agreements and memorandums of understanding between Aboriginal communities and extractive sector companies. These agreements up until now have been largely confidential. Requiring disclosure of these agreements could have both positive and negative impacts. Managing the impact of this legislation will be a project for all stakeholders during the two-year transition period.

A serious concern is that making these royalty figures public could encourage the federal government to reduce funding for infrastructure and social services in those communities.

The potential for the federal government to rely on private companies to discharge its funding obligations is troubling. Financial agreements compensate the First Nation for impacts to their territories; they do not serve as replacement source of public infrastructure funding.

A potential benefit from this legislation is that it may level the playing field among parties who seek to negotiate financial compensation agreements. Those negotiating may benefit by having precedent agreements and financial figures available.

Summary of Key Provisions

<p>When would reporting obligations start?</p>	<p>Companies must report payments made to Aboriginal governments beginning two years after the legislation comes into force</p>
<p>Who has to report?</p>	<p>Reporting requirements apply to:</p> <ul style="list-style-type: none"> ◆ TSX-listed companies ◆ companies doing business or owning assets in Canada that have met at least two of the following requirements within the last two financial years: <ul style="list-style-type: none"> ■ have at least \$20 million in assets ■ have generated at least \$40 million in revenue ■ employ an average of at least 250 employees ■ any other factor prescribed by regulation <p>A company will only have to report if the total payment for the financial year exceeds either \$100,000, or the amount prescribed by regulation</p>
<p>What must be reported?</p>	<p>Report payments made during the course of commercial development of oil, gas or minerals. Development includes exploration, the acquisition or holding of a permit, licence, lease or any other authorization, or any other activities prescribed in the regulations in relation to oil, gas or minerals.</p> <p>Report:</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 ◆ any other category of payment prescribed by regulation
<p>What are the penalties for failure to comply?</p>	<p>Failure to report, reporting misleading information, or constructing an agreement to avoid the payment reporting rules would each attract a maximum penalty of \$250,000.</p> <p>Directors and officers would also be personally liable for an offence where they directed, authorized, assented to, acquiesced in or participated in its commission. The legislation does provide for a due diligence defence.</p>

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