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Extractive Sector Transparency Measures Act

Overview

The *Extractive Sector Transparency Measures Act* (ESTMA or the Act) came into force on June 1, 2015. The Act introduces new reporting and transparency obligations for the Canadian extractive sector and contributes to global efforts against corruption in the sector.

Canada's requirements are broadly aligned with those in the European Union (EU) (Transparency and Accounting Directives) and the United States (Provision 1504 of the *U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act*) in an effort to ensure a level playing field for Canada's extractive sector.

Who needs to report?

Reporting Entities are corporations, trusts, partnerships or other unincorporated organizations engaged in the commercial development of oil, gas or minerals directly or through a controlled organization that are either:

- ◆ Listed on a Canadian stock exchange.
- ◆ Not listed on a Canadian stock exchange but have a place of business in Canada, do business in Canada or have assets in Canada and meet two of the following thresholds in one of their two most recent financial years:
 - ◆ Have at least C\$20 million in assets.
 - ◆ Generated at least C\$40 million in revenue.
 - ◆ Employ an average of at least 250 employees.

What needs to be reported?

Reportable payments to a payee must relate to the commercial development of oil, gas or minerals and total at least C\$100,000 in one of these payment categories:

- ◆ Taxes (other than consumption and personal income).
- ◆ 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.

What is a payee?

1. Any government* in Canada or abroad.
2. A body established by two or more governments.
3. Any trust, board, commission, corporation, body or authority that exercises a function, power or duty of any government in Canada or abroad.

When do you report?

Reporting Entities must report on payments made during financial years beginning after June 1, 2015. They are required to publish their report within 150 days following the end of their financial year.

How do you enroll and submit a report?

Reporting Entities must enroll with Natural Resources Canada (NRCan) prior to submitting their annual report. NRCan encourages enrolment **before June 30, 2016**. Consult the *Technical Reporting Specifications* and *Guidance* available on the NRCan website for further information on reporting.

How does substitution work?

The Act gives the Canadian Minister of Natural Resources authority to allow **Reporting Entities** to substitute reports prepared in another jurisdiction (whose requirements are determined to be an acceptable substitute) to meet Canada's requirements. At this time, EU and European Economic Area member countries that have implemented the EU Accounting and Transparency Directives are determined to be an acceptable substitute under the Act.

* The Act includes a two-year deferral (ending June 1, 2017) for reporting payments to Indigenous governments in Canada. Additional information on the deferral is available on the back of this page.

ESTMA and payments to Indigenous governments

The following are common questions about the extractive sector reporting payments to Indigenous governments in Canada* under the *Extractive Sector Transparency Measures Act* (ESTMA or the Act).

Are Indigenous governments required to report their revenues under the Act?

No. Indigenous governments are **not** required to report under the Act. The Act requires that extractive companies (those engaged in the commercial development of oil, gas or minerals) report payments they make to all levels of government in Canada and abroad.

How does the Act define government?

The term “government” is broadly defined as payee under the Act and includes any government in Canada or abroad. This comprises federal, provincial, regional, municipal and Indigenous governments, among others. Extractive transparency measures in Canada, the United States and the EU all use a similar broad definition that recognizes governments around the world come in many forms. (See the reverse of this page.)

Why was reporting payments to Indigenous governments in Canada deferred?

The requirement for extractive companies to report payments to Indigenous governments in Canada was deferred by two years until June 1, 2017. The deferral responds to comments from Indigenous peoples and industry during the development of the Act that more time was needed to consider the potential implications of reporting payments made to Indigenous governments. NRCAN continues its engagement with Indigenous peoples on the implementation of the Act.

How does the Act differ from the *First Nations Financial Transparency Act*?

The *First Nations Financial Transparency Act* requires First Nations under the *Indian Act* to prepare and publish certain documents relating to band finances and expenditures. ESTMA requires oil, gas and mining companies to report payments made to all levels of government in Canada and abroad.

Are extractive companies required to disclose impact and benefit agreements?

No. Extractive companies are **not** required to disclose impact and benefit agreements (IBA). The Act requires extractive companies to report certain types of payments of \$100,000 or more made in relation to the commercial development of oil, gas or minerals. Some of these reportable payments might be included in IBAs.

Will information from the Act affect federal transfer payments to Indigenous governments?

The Act does **not** modify existing procedures for calculating Canada’s transfer payments to Indigenous communities. Extractive industry reports on payments to Indigenous governments will not be used as a basis to determine federal funding levels.

How has the Government involved Indigenous peoples in developing the Act?

NRCAN has engaged Indigenous peoples from the earliest stages of developing the Act in 2013. This has included meeting with Indigenous governments and organizations in bilateral discussions and regional roundtables.

How can I learn more?

NRCAN will continue its engagement with Indigenous peoples on implementation of the Act during the deferral period.

For more information, contact NRCAN by email at nrcan.estma-lmtse.nrcan@canada.ca or visit our website at nrcan.gc.ca/estma.

* References above to Indigenous governments in Canada relate to section 29 of the *Extractive Sector Transparency Measures Act*.