Publish What You Pay
Norway

- 2/3 of the poorest people in the world live in resource rich countries
- Natural resources has the largest value creation potential to mobilize own capital, but profit often ends up elsewhere
- Today, the Extractive Industries can transfer significant profits out of the source country before it's taxed
- One simple policy proposal will give investors and other constituents the instrument to follow their money

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Written by Richard Murphy, rewritten and adapted by Frian Aarsnes

An extended country by country reporting standard

A Policy Proposal to the EU

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AN EXTENDED COUNTRY BY COUNTRY REPORTING STANDARD
A POLICY PROPOSAL TO THE EU

Why is country-by-country reporting so important?

Large oil & gas and mining companies are to high degree multinational companies;

1. They are usually incorporated in industrialized countries taking advantage of being home-based in resourceful countries with easy access to large capital markets.

2. They usually operate in many different countries around the globe, seeking the most attractive investment opportunities and thus amongst other participate in a game of harmful tax competition between countries.

3. They are on a regular basis using companies set up in jurisdictions that allow less reporting to the public or less taxation than the average nation, thus undermining the social contract between the society at large and the individual corporation.

4. They are selling their products on what seem like transparent market places, but before the products reach the market place, they may have changed hands several times internally in the company, thus having the opportunity to place profits where they are least taxed.

5. They are using internal transactions involving transfer pricing and many jurisdictions to a high degree, financial instruments internally and externally and sophisticated accounting standards and systems that make it almost impossible for a tax authority to control the tax base presented to it, thus having the opportunity to shield against unwanted insight.

The goal of country-by-country reporting is to provide the same valuable information to all constituents:

1. It provides key stakeholders like investors with key, standardized information to prioritize their use of funds and give investors, in their role as owners, the information needed to enter into a dialogue with the companies about their priorities.

2. It levels the playing field among extractive industry companies as it forces less transparent companies to provide the same level of information as more transparent companies.

3. It provides regulators with key information they need to provide for good regulations in the extractive industries sectors.

4. It provides data to governments, analysts, media and the population at large that enables these to monitor and challenge companies and government institutions towards the most effective economic management of the revenue streams derived from the extractive industries.

5. It provides tax authorities with data in a standardized form about the extractive industry companies, reducing the cost of data collection, providing for better communication between tax authorities and companies, and giving less room for criminal activities from those few companies that are willing to resort to such practices as it becomes more difficult to move funds from one jurisdiction to another to the extent that a tax authority has asked for insight into the records in a tax jurisdiction.

For the full report: **www.publishwhatyoupay.no**

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PREFACE

The extractive industry has been under increasing criticism for corruption, tax evasion, human right abuses and for shifting profits from countries with upstream operations to other parts of their corporate structure, often in low tax jurisdictions. All this is being done under a shield of opacity as contracts are secret, part of the corporate structure is undisclosed and their financial statement information is so aggregated and condensed that even the most interested reader are left uneducated.

PWYP Norway has attempted to contribute to a growing body of investigations showing that the secrecy surrounding the extractive industries has harmful effects both on developing countries and developed countries. In the report '*Lost billions. Transfer pricing in the extractive industries*', we have estimated that over 100 bn. USD has disappeared through potential mispricing of crude oil in the USA and the EU between 2000-2010.

Transfer pricing is one of the most usual techniques that extractive industries can use to transfer pre-tax profits from the source country and to affiliated companies elsewhere. Today, over 60% of world trade is taking place within transnational companies, such as the extractive industries.

In addition to this, companies can also shift profits through complex financial instruments, which are not directly linked to the physical crude oil, such as derivatives. In the report '*Protection against derivative abuse*' we have shown that extractive companies are heavy users of derivatives, which can be used to transfer profit out of the source country before it's taxed.

Also, in the Piping Profits report we have shown that ten of the world's most powerful extractive companies operate with at least 6038 subsidiaries, where 2038 are incorporated in secrecy jurisdictions. No government in the world is able to see the whole picture of what is going on within these companies unless the companies have to report this information on an obligatory basis country by country.

This is serious as 2/3 of the world's poorest people live in resource rich countries and desperately need investments that can give opportunities to escape poverty. To the extent that parts of taxable profits are moved out of these countries, it directly hurts the countries in question, but also developed countries that will have to contribute more aid in response to less tax revenues from companies owned to a large degree from the same developed countries.

For Africa, export of oil, gas and minerals alone is more than nine times the value of international aid. The real values generated are larger than this, given the various reports summing up profits lost to corruption, tax evasion, derivatives abuse, criminal activity and transfer mispricing. Aid will never present such values, neither is it wanted to be dependent upon aid. It is fundamental that profits generated extracting and trading with non-renewable and finite resources that are associated with great environmental risk should benefit those the company manage the resources on behalf of: the citizens of that country. Country-by-country reporting is not a universal mechanism that will solve all the world's problems, but is large and important step in the right direction.

This is why over 650 organizations from over 50 countries have organized in Publish What You Pay (PWYP) and want to know whether lucrative deals based on extraction with their countries non-renewable and finite resources provide meaningful investment opportunities to escape poverty. There is now a global demand from governments, policy makers, regulators, investors, asset managers, pension funds, stock exchanges, companies and civil society for increased transparency and accountability from the extractive industries. This is needed to regain trust so that the interests of society can be upheld and respected.

Many governments have now realized it is unfair that the resource rich country does not get their fair share of value creation and want to do something about this. One milestone has been enacted in law in the USA. However, there are significant differences between what is called for in this PWYP Norway report and what has been enacted in the 'Dodd-Frank' law in the US. The Dodd-Frank disclosure is very useful for two reasons: It will help citizens to know what a company pays to their country and to hold their governments to account for what they receive, and, it builds into legislation the disclosure required in the EITI (Extractive Industry Transparency Initiative). On this background, the EU has now proposed a similar legislation. There are subtle nuances between the two, but it very much builds on the US legislation. A reporting as enacted in law in the USA and as proposed by the EU can expose corruption in the source country.

But, given that the extractive industry has access to a large toolbox of techniques that can be used to shift profit from the resource rich countries, and to itself, before it's being taxed, there is no way of finding out if the taxes paid are correct with the law in US and the proposed law in the EU. So what can be done about this?

PWYP Norway proposes a very simple and effective reporting mechanism called '**An extended country by country reporting standard for the extractive industries. A policy proposal to the EU**'. This form of reporting is in line with how extractive companies are already consolidating their accounts, which means that this will not increase costs. All the information we request is already readily available in companies consolidated accounts and tax information that is collected in connection with the home office tax return. All we ask is that it is the most important information in the financial statement, like revenues, costs, taxes and production, is broken down and disclosed country by country. This will give valuable, standardised information across countries about the value creation and where companies pay tax so that investors and other constituents can seek insight into the use of their resources.

Mona Thowsen
General secretary, PWYP Norway

If the reader would like to share any comments, viewpoints or information, or have any questions or suggestions for further investigations, please contact us at: **post@pwyp.no**

1. SUMMARY

For developing countries the extraction of natural resources has often been viewed as offering the greatest economic potential to lift a country out of poverty.

Yet the extraction of natural recourses is linked with low economic growth, conflict, high inequality, corruption, low levels of democracy, weak institutions and little incentive for a state to build up institutions that underpins a social contract.

This is important because two-thirds of the poorest people in the world live in natural resource rich countries.

This 'resource curse' is not just an issue for developing countries. Lack of well-being for the poorest billion in our world is whether we like it or not intrinsically connected to our own well-being. Conflicts and forced migration, environmental disasters, and the lack of access to all those things that contribute to lifting people out of those interlocked problems we call 'poverty' also affects you and me and others in the developed countries or neighbouring countries as well. The combination of rich resources and poverty directly affects all of us through the inefficiency it creates in the global economy and knock-on effects in the form of the need for humanitarian aid to resource rich countries and the loss of global economic growth. The value of people's ability to work is far greater and has a greater long term effect on the global economy than the natural resources in any particular country.

Poverty is connected to concrete political decisions and policy. And it is possible to change the politics of poverty.

When states trade with non-renewable and finite resources it is essential that this trade benefits the country and all its citizens by creating a basis for increasing the skills in the workforce through education and more advanced industries and thus creating sustainable and long-term growth that generates development for the common good of everybody.

Extracting resources often require heavy investments and expertise, which often necessitates a state entering into contracts with commercial partners for development of its resources. No matter how good a contract is, it is of little value if it is not being upheld or sanctioned in the event of non-compliance.

By entering into such an arrangement with a commercial partner, a state limits its own control of its assets. A state has to be able to trust that its commercial partner will manage resources prudently so that benefits can be maximized on behalf of its citizens, to whom it should be accountable.

Trust implies a firm reliance on the integrity, ability and commitment to honour an obligation. Trust cannot be claimed. It must be earned. The on-going financial crisis highlights the impact of financial opacity on society. This has affected society's trust in industry, capital providers and national government's ability to regulate.

In today's network-based and information-based economy with increasing international cross border activities, increasing diversification through subsidiaries, increasing use of multiple jurisdictions including jurisdictions with no obligation to provide financial information; the oversight and accountability of financial transactions by governments is limited.

Institutions responsible for defining accounting standards, setting reporting standards and preparing the required resulting information have also been deeply challenged. Several of the institutions in charge of such processes are seen as 'too close' to the financial interests they regulate, i.e. that they are not working closely enough to secure key stakeholders like investors and others the information they need to monitor investments. There is increasing concern that some lack the critical distance and independence from the companies they regulate. Without independence to provide objectivity on what needs reporting, it is nearly impossible for interested stakeholders to secure the information they need to hold those in charge of such key processes to account. This gives rise to large multinational companies where the power is not with the board of directors where investors can monitor their investments, but with all-powerful CEO's that can make critically wrong business decisions like the energy company Enron or extractive companies mired in huge environmental disasters. Given existing reporting frequently fails to meet stakeholders' needs, the hugely significant challenge of ensuring extractive industries are held to account is impaired.

As a result there is now a global demand from governments, policy makers, regulators, investors, asset managers, pension funds, stock exchanges, companies and civil society for increased transparency and accountability. This is needed to regain trust so that the interests of society are upheld and respected.

The USA has established a requirement for a country-by-country reporting in law and the provision was passed in July 2010. It is incorporated in the Dodd-Frank Wall Street Reform and Consumer Act ('Dodd-Frank Act'). The provision stipulates the main rules of country-by-country reporting and requires the U.S. Securities Exchange Commission ('SEC') to prepare more detailed rules ('final rules'). The SEC is currently engaged in concluding its work on the final rules. In the hearing note on the proposed rules under section 13 (q), it is stated that the American rules are assumed to encompass over 90% of the world's major oil companies and 8 of the 10 largest mining companies[1].

The US is currently ahead of the EU in this work. The EU has held a consultation on country-by-country reporting and it is believed that a first draft of a communication on this topic may be presented before the summer.

Publish What You Pay Norway (PWYP Norway) has already suggested that Norway should follow the recent financial reporting regulation which requires the extractive industry to publish payments on a country-by-country basis and introduce a country-by-country reporting in Norwegian law on an independent basis. PWYP Norway commissioned a legal consideration of how such a country by country reporting for companies in the extractive industries could be introduced in Norwegian law[2].

But, there are significant differences between what is called for in our new report and what will be disclosed under section 1504 of the Dodd-Frank Act in the USA. There is good reason for this. Publish What You Pay welcomes the disclosures required by the Dodd-Frank Act, which will disclose payments made. This is useful, because it builds into legislation the payment disclosure that is required under the Extractive Industries

1 http://www.sec.gov/rules/proposed/2010/34-63549.pdf on page 12, footnote 39

2 http://www.publishwhatyoupay.no/sites/all/files/PWYP%20Norway%20legal%20report%20on%20country%20by%20country%20reporting%20for%20extraction%20companies.pdf

Transparency Initiative. However, that form of disclosure is not accounting information as such and does not put the payments in its correct framework.

Accounting information provides a very specific basis for comparison so that the quality of the disclosure can be assessed, and the impact of behavioural change over time can be reviewed. As an example, while royalty disclosures are required under the Dodd-Frank Act body of disclosure, a full country-by-country reporting for the extractive industries, as recommended by PWYP Norway, requires disclosure of sales information, both third party and intra-group, within each jurisdiction so that royalties disclosure information can be compared with the sales figure on which it is most often based. Similarly, while Dodd-Frank requires disclosure of corporate profit taxes paid, it does not require disclosure of the profit figure on which it is based. Hence, a full country-by-country reporting to the extractive industries does require that disclosure in order to give the correct framework for the payments being disclosed. This difference is fundamental. It transforms the payment data into data that is consistent across companies and across time. It transforms information that is only of interest to those seeking to hold extractive industries corporations to account for payments they make to host countries into accounting disclosure that has considerable use for a much wider audience, not the least for the major accounting information users – the investors – towards which the companies ultimately are liable.

Accounting disclosure is of interest to investors. Accounting disclosure reveals future taxation risk and business risk in general. Accounting disclosure and country-by-country reporting rules would amongst other show the use tax havens by a multinational corporation within the extractive industries, something the Dodd-Frank disclosure would not. Such disclosure might give an insight into governance risks; risks that to a significant degree affects investors, developed countries and developing countries alike. It might also indicate whether there is serious risk of funds being relocated from a host country to a tax haven through transactions and instruments to avoid amongst other disclosure under the Dodd-Frank rules.

Dodd-Frank disclosure is, of course, very useful, welcome and timely. A full country-by-country reporting would, however, transform that disclosure into something of broad use for all stakeholders; investors, governments, regulators, tax authorities and others with interest in the extractive industries. That is of significantly greater benefit. The reward for the small extra effort that a full country-by-country reporting would require is therefore substantial, and that is why we recommend this in our report.

An important argument in favour of Norwegian incorporation of extended reporting requirements in Norwegian law on an independent basis is the leading role Norway has taken in the area of good governance and increased transparency in the extractive industries. Norway is amongst other things the first country in the Organisation for Economic Co-operation and Development (OECD)[3] that has implemented the Extractive Industries Transparency Initiative ('EITI')[4]. By establishing an obligation to undertake country-by-country reporting by law, Norway could contribute to global recognition of this tool. It is important that Norway, as a resource rich country is in the forefront on transparency and accountability, and take the lead on this issue. Norway is a country that enjoys much respect abroad for its administration and management of its natural resources. Implementing these elements would be a natural development from reports such as 'Tax havens and development' NOU 2009:19[5] by the Commission on Capital Flight from Developing Countries, and the more recent 'The Governments Action Plan Against Financial Crime'[6]. In this last report we can read that 'country by country reporting' is set as action item number 46: where *'The Norwegian Government considers*

3 See http://www.regjeringen.no/nb/sub/eiti/aktuelt/norge-godkjent-som-fullt-medlem-av-eiti.html?id=635021

4 EITI is a tripartite co-operation between authorities, companies and civil society for the promotion of transparency in extraction industries. EITI has prepared a set of criteria and principles for transparency and good governance. If a country chooses to implement EITI the country must fulfill the said criteria. For further information see http://eiti.org/node/1164.

5 http://www.regjeringen.no/upload/UD/Vedlegg/Utvikling/tax_report.pdf

6 http://www.regjeringen.no/Upload/FIN/Info/2011/forelopig_versjon_handlinsplan_oko_krim.pdf

if it can be a basis to implement an extended country-by-country principles, either as a part of a new EU – regulation or on an individual basis'.

But secrecy in the extractive industry has also contributed to this process. A growing body of investigations has raised great concern that secrecy has hindered development in poor but resource-rich countries. Secrecy jurisdictions (tax havens) are thought to actively contribute to this. As a result, access to capital needed for development is denied when the tax basis from one country is transferred to the next – but almost never to a socially responsible country as these transfers tend to stay within the tax havens and are reused from there, thus denying also the home countries of these extractive industries countries from their tax basis as reinvestments and thus future taxable revenues are not done out of the home countries but out from the tax havens, creating an ownership layer between the ultimate parent company and the operations in the host countries. We do not suggest that these activities are illegal. Our concern is that most of this is legal and accepted as normal when the impacts seem so serious and harmful to the global society. Maybe the single most important reason for developed countries to introduce country-by-country regulation in addition to protecting the information needs of key stakeholders like investors is probably to gain insight into where the money flows within the extractive industry companies and thus also how developed and developing countries alike are harmed by these practices.

The objective of this report is to build upon and expand our previous report, and to present our proposal for the full list of concrete elements we think should be made subject to financial disclosure in the extractive industries.

We believe that these elements will help highlight and reveal the most harmful financial practices that abuse developing countries, and that they will in promote financial integrity that can support countries in their aim of mobilizing domestic economic resources. The proposals need to be considered as a coherent whole where non-inclusion of one element may undermine the importance of the others. Disclosure of these elements will also protect those extractive companies that do not use harmful practices against harmful competition from companies that are willing to use these practices.

In a previous legal report we have already considered whether a requirement for country-by-country reporting should be incorporated in the Accounting Act or the Securities Trading Act. We still presume that the new requirement would have a somewhat broader application through incorporation in the Securities Trading Act. This also links to that companies that are seeking financing in transparent markets should also be transparent in their information back to these markets. If a company is not willing to be transparent, there is every reason to question why they should be allowed to finance themselves in transparent markets and thereby undermining the other companies on this market.

Against this background we are of the opinion that one way of regulating this in Norway would be to incorporate the reporting requirement as a new sub-paragraph in the Securities Trading Act section 5-5, but that we adjusted the proposal slightly so that information 'relating to' payments should be provided, and not only information about the payments themselves. This wording is in accordance with the corresponding provision in Dodd-Frank Section 13 (q) (2) A. The proposed section 5-5 is then as follows:

'The issuer of shares or other publicly traded financial instruments as defined in section 2-2.1 shall in the annual report provide information relating to payments to another state, public body in another state or a foreign state-owned company for the commercial exploitation of natural resources. The Ministry can issue regulations regarding which payments this applies to, which recipients are encompassed, what information is required, the application of the

mandatory obligation for subsidiary companies of the issuer, and further rules of the reporting'.

We will not go further into a legal consideration of how the concrete elements we propose in this report should read. In this report we explain what these proposals, if implemented, would show, why existing alternatives will not show this, and what country-by-country reporting may look like.

Working on transparency and accountability in the extractive industries has been a bit like an Alice in Wonderland experience; each time you enter through one door you enter into a strange new room with more doors without signs. Demanding that companies and banks publish what they pay to the countries where they operate is quite obviously needed so that citizens can hold their governments accountable for the allocation of resources. But some doors are so tiny and small they may seem insignificant. Then again, you may lack the key to enter into a door or it is placed out-of-reach so is seemingly inaccessible. Often it is the smallest and most curiously placed doors that may reveal the most. This is why, for example, we take an interest in derivatives in this report.

This policy proposal is not a means in itself; it is intended as a means of creating an environment that is necessary in order to build in a well-functioning state.

We know that those who have a great deal invested in opacity prefer the status quo. But the status quo is not working. That is why the proposals made here are so important and they will benefit ALL users of financial information, not least the owners themselves – the investors.

This is an important moment. The European parliament is about to consider the EU Commission's proposal on a country by country reporting standard for companies. This decision will afffect the lives of millions of people. The EU should show leadership in this crucial issue and go beyond the current proposal. PWYP Norway proposes an extended country by country reporting for the extractive industries and explain why that is in the best interest of both governments and companies, as well as investors, citizens and other users of financial information.

We welcome any comments/questions in writing: **post@pwyp.no**

2. THE EXTRACTIVE INDUSTRIES IN A GLOBAL WORLD

2.1. Multinationals and markets

Laws are national and agreements are usually bilateral like tax treaties or information exchange agreements. There are a few multinational agreements, and these usually form institutional bodies like the EU, the UN, the World Bank, the IMF, regional investment banks like the African Development Bank, WTO, OECD, OPEC etc or sub chapters of these institutions. No multinational agreements except the Extractive Industries Transparency Initiative (EITI) and the OECD chapter on transfer pricing are particularly concerned with the insight into and the governance of multinational companies and their transactions, and then only with limited aspects of multinational companies.

Large oil & gas and mining companies are to high degree multinational companies;

1. They are usually incorporated in industrialized countries with import needs that also have capital markets (like China, EU, USA) or industrialized countries with a large resource base (like Australia, Canada, Chile) or industrialized countries that permits less transparency (like Switzerland), thus taking advantage of being home-based in resourceful countries with easy access to capital.

2. They usually operate in many different countries around the globe, seeking the most attractive investment opportunity and thus amongst other participates in a game of harmful tax competition between countries.

3. They are on a regular basis using companies set up in jurisdictions that allows less reporting to the public or less taxation than the average nation, thus undermining the social contract between the society at large and the individual corporation.

4. They are selling their products on what seems like transparent market places, but before the products reach the market place, it may have changed hands several times internally in the company, thus having the opportunity to place profits where they are least taxed.

5. They are using internal transactions involving transfer pricing and many jurisdictions to a high degree and financial instruments like derivatives internally and externally combined with sophisticated accounting systems that make it almost impossible for a tax authority to control the tax base presented to it, thus having the opportunity to shield against unwanted insight.

Market places for selling oil were some of the first that gained the size that made the market place meet the requirement that no individual buyer or seller could materially influence the pricing in the market. Other petroleum products like gas and NGL were then pegged to the price of oil. Markets for selling minerals, metals and agricultural produce have followed.

These markets where unprocessed or partially processed goods are sold are usually called commodity markets. A majority of commodity markets are catering to produce from extractive industries. The common denominator for these markets are that the produce sold are fairly homogenous, i.e. that the produce from one corporation can hardly be distinguished from the produce from another corporation. Many of these markets are still so small that the pricing in the market can still be influenced by individual players or a group of players.

Extractive industry companies are heavy users of capital markets (raising equity), money markets (raising debt financing), currency markets (enabling the transfer of goods and services across borders), commodity markets (selling their produce) and derivatives markets (transferring risk across companies and across borders).

Insight into the extractive industries are thus important for everybody that are involved in any of these markets, and the major constituents that should be highly interested in country-by-country reporting from extractive companies are thus investors (capital markets and money markets), finance institutions (money markets, currency markets and derivative markets), traders & analysts (capital markets, currency markets, commodity markets and derivative markets) and buyers (commodity markets) and governments regulating markets and taxing corporations and resources. This is the reason Publish What You Pay Norway are seeking country-by-country reporting of not only payments, but also of the related accounting information so that major constituents can get information to form independent decisions.

One of the weaknesses of the current information from extractive companies is that it is so condensed and aggregated that it is impossible even for an interested constituent to in any form or shape to relate the information to the business environment that the corporation operates within, i.e. the operations in the individual countries the corporation is active. Country-by-country reporting as demanded by Publish What You Pay will go a long way in remedying this situation.

The proposal from Publish What You Pay Norway will also level the playing field among extractive industry companies, in that companies that are seeking equity or debt financing in transparent markets will also have to become more transparent whether they are home-based in a tax haven or in countries where public reporting requirements are not as developed yet, like China and Switzerland. This will be a competitive advantage for companies which are home-based in more transparent jurisdictions like most of the US (except Delaware) and EU.

2.2. Multinationals and the use of transfer instruments

There has been a lot of focus on transfer pricing practices and the secrecy practiced within the extractive industries that have led to the OECD guidelines on transfer pricing and the Extractive Industries Transparency Initiative (EITI).

Instruments that are more notorious in the ability to shift profits from an activity from one country to another have in the meantime not been given the same attention.

We will here briefly outline the major instruments by which some companies within the extractive industries are able to put themselves in a better position economically than they give impression of to investors, media, governments and the population at large.

Those who dispute the negative effects of these instruments for these companies are most likely benefitting from them in some way or another or are working on behalf of these companies to uphold these mechanisms to the detriment of the extractive industry companies who are not using these instruments and to the detriment of the society at large.

Most others will immediately see the destructive power these mechanisms have in relation to building sustainable societies for the future. We are here talking about those companies that misuse knowledge and power at the detriments of others, whether these 'others' are governments, citizens, workers, competitors, financiers or investors.

Some transfer instruments are widely used like mark-to-market of movable assets, while some are thankfully only used by relatively few companies like directly criminal practices. The transfer instruments and practices being used are presented roughly in the order Publish What You Pay Norway believes are the order of magnitude that these instruments and practices transfers money across national borders globally.

CORRUPT PRACTICES

When most people think of corrupt practices the association is often money under-the-table initiated by a low-level, local government official and not by the extractive industry themselves. Bribes in their simplest form is however the least harmful of the corrupt practices although it is a practice that produces unpredictable and harmful behaviour in government officials in dealing with both corporations and the country's own citizens.

Far more dangerous to a country's economy is the practices whereby extractive industry companies are lobbying, threatening, financing and bribing high-level officials in ministries and other government bodies and politicians both local and in parliaments to secure the companies access to acreage, lower taxation and protection from having to comply with even the most basic environmental regulation. These officials and politicians, while receiving substantial individual support, are devouring their countries and their citizens of riches that far exceed any that are within the reach of any individual person. Tax holidays are agreed, tax and royalty rates are slashed, preferential treatment over local companies are established, taxes payable are renegotiated (always down) and tax administrations are underfinanced and understaffed. There must be many a government official or politician around that wonders what happened to them when they came in contact with extractive industry companies and their associated consultants.

Corrupt practices increases earnings that can be transferred to affiliated companies either through reduced costs or reduced taxes. These corrupt practices probably give rise to the largest unfair allocation of profits between corporations and governments.

There are no easy fixes to corrupt practices, but an extended country-by-country reporting is clearly an instrument in the right direction. Corrupt practices are starting to get serious attention from stakeholders.

DERIVATIVES ABUSE

The use of derivatives started with the practice of hedging i.e. the use of financial instruments to secure (hedge) that a corporations revenues would not be lower than, or cost not be higher than, the levels entered into in the hedging transaction. Derivatives are complicated instruments and will be covered in a separate report from Publish What You Pay Norway, and we will here only give the top of the iceberg in relation to these instruments.

Used correctly, hedging is a good instrument in securing profits in an uncertain world, especially protecting earnings against currency fluctuations arising from timing differences between costs and revenues or between pretax profits and taxation.

Hedging is different from speculation, although the term hedging is being used for both in order to lend legitimacy to the latter. Use of financial instruments involving other than currency hedges mostly stem from speculation, i.e. where a company takes a position in the derivatives market to try to 'beat' the market by speculating in that the prices will be different in the future than what the market has prices in.

Derivatives are unfortunately also an ideal instrument to move large amounts of pretax earnings from one tax jurisdiction to another. By entering into opposite derivative instruments with the 'wrong' timing it is possible to create huge losses in normal or high tax jurisdictions and equivalent profits in low or normal tax jurisdictions, thus being able to transfer huge amounts of untaxed funds legally out of a country.

Derivatives abuse is probably competing for the position as the second largest source of unfair allocation of profits between corporations and governments, mostly because derivatives are viewed as legitimate and legal instruments.

There is a quick and easy fix for derivatives abuse, though. The expectation in a true hedge, i.e. the part of derivatives trading that is not speculation, is neutral which means that the company entering into the transaction does not expect to gain or lose from the transaction at the point of entering or they are expecting to gain in the long run. It is possible for countries unilaterally to single out use of financial instruments as a separate tax base from the extractive income tax base. This would mean that gains are taxed based on the general tax rate in the country and losses can be carried forward and taken against future gains. This way companies that are neutral or which is expecting gains in the long run will not be harmed and can continue using derivatives, but the companies that are amassing losses in the country would find that they have no tax shield for the misuse of derivatives anymore.

'MARK-TO-MARKET' AND TRANSACTIONS OUTSIDE MARKETS

Mark-to-market is an accounting concept whereby an asset in the balance sheet is adjusted on a regular basis to its market value. Between affiliates in countries with markets and with taxation, this concept updates the value of an asset in the accounts, with changes affecting both the profit and loss statement and the balance sheet. The precursor to mark-to-market was the regular change of receivables and liabilities in another currency than the reporting currency to its updated value at month end or year end. This is a use of mark-to-market that is necessary in order to close accounts in the reporting currency on a regular basis.

The mark-to-market concept first developed among traders on futures exchanges, and began to spread in the 1980's. In early 1990's mark-to-market accounting started to giver raise to various scandals, which culminated with the Enron scandal. In the words of Wikipedia: *'As the practice of marking to market caught on in corporations and banks, some of them seems to have discovered that this was a tempting way to commit accounting fraud, especially when the market price could not be objectively determined (because there was no real day-to-day market available or the asset value was derived from other traded commodities, such as crude oil futures), so assets were being 'marked to model' in a hypothetical or synthetic manner using estimated valuations derived from financial modeling, and sometimes marked in a manipulative way to achieve spurious valuations.'* [7]

The 'mark-to-market' concept has pervaded the entire thinking on assets and has spilled over to the thinking around transactions to such a degree that most assets in the balance and the revenue from these are now governed by various aspects of this thinking. It is now probably competing with derivatives for the second place with regards to the ability to transfer funds out of normal to high tax jurisdictions and into low tax jurisdictions, mostly because it is viewed as a legitimate and legal practice between countries with markets.

The largest problems with the thinking behind 'mark-to-market' arises in one of the following situations: (1) there is no 'market' and a value needs to be calculated in a model, (2) the 'market' is very volatile and unpredictable, and (3) the concept is transferred to other areas whereby historic cost accounting and contracts based on an acceptable return is replaced by marking-to-market accounting and contracts based on market rates.

7 http://en.wikipedia.org/wiki/Mark-to-market_accounting

The following problems arise from these 3 situations:

1. There is no market value
   If there is no market value cleared by independent parties in a transparent market, the mark-to-market concept essentially entails that a market value has to be 'modeled', i.e. that one uses various tools to try and 'predict' a market value. Such models and predictions may very well be tailored in the direction that favors the company using the mark-to-market accounting, thus increasing costs and reducing revenues in host countries and transferring the values to tax havens or other locations with tax rates lower than the host country. It is extremely difficult for a tax administration to get around this thinking because the tax authorities do not have their own models to double-check the thinking.

2. The market is very volatile and unpredictable
   A company that has a lot of mark-to-market assets is at risk of getting a very volatile balance sheet, and loss of asset value can trigger financial recourses whereby lenders can seek downpayments on loans prior to original schedule, a fact that can lead to cash constraints on the business and in the worst cases can actually put the company out of business as it is not able to find other funding to pay the required downpayments. This is however a larger problem for financial institutions than for extractive companies, though.

3. The concept is transferred to other areas
   A much worse development when it comes to extractive industries is however the transfer of this 'market' thinking to other areas, especially where one goes outside the market. It started with the shipping industry that went 'offshore', i.e. they placed movable assets in low tax jurisdictions, but charged world market rates for the services although the assets were not themselves in any of the markets they served. We will investigate this concept in relation to the extractive industries.

A market economy is an economy in which the prices of goods and services are determined in a free price system based on competition between various providers of goods and services to fulfill the market demand for these goods and services. A market economy does not operate outside the society at large; in order to have markets there needs to be people, corporations and governments that created demand, governments are needed to provide for regulation of employment markets, financial markets, equity markets and a judiciary system in order to avoid anarchy and societal breakdown (governments provide stability, a valued concept by corporations) and governments also needs financing from taxes in order to provide infrastructure in its widest definition (viewed as common goods, i.e. a good that is shared and beneficial for all (or most) members of a given community), whether it is transportation, health, security or others.

The underlying concept is that in a market economy goods and services are demanded and supplied in a system governed by regulations to provide stability (enhances the market) and where profits are taxed in order to provide for the common goods need to provide that stability.

A market economy goes astray when participants in the market equilibrium (balance between demand and supply) are allowed to establish themselves in jurisdictions that are 'outside the market' so to say, i.e. they are establishing themselves in low tax jurisdictions where there is no taxation of neither employee nor corporation. When this is allowed, an unbalance is created in the market economy whereby (1) unfair competition is allowed to the detriment of the employees and corporations in countries that are paying taxes and (2) there is a constant leakage of funds from the market economy (the countries providing the market) and to the shielded economy that does not participate in the creation of the market economy.

We can see examples of this in the practice of establishing Single Purpose Vehicles/ Entities (SPV/SPE's). A Single-Purpose-Vehicle (SPV) is a company that is established to cater to the investment in a single long term asset, often to reduce financial risk, but from the early 1980's also to a larger and larger degree to reduce taxation by moving long term movable assets 'outside the markets', placing them in low tax jurisdictions.

There are essentially two types of decisions with regards to acquiring an asset; the investment decision and the financing decision. The investment decision says WHAT to acquire, the financing decision says HOW to structure the acquisition. In the 30 years that has gone since the beginning of the 1980's there has been a massive shift of long term movable assets into low tax jurisdictions. The move has been so massive that it is part of a number of mechanisms that threatens the entire global economy if allowed to continue.

'Mark-to-market' and the use of SPV's in investments are both used to peg the value of an asset to a market value, and the value is allowed to fluctuate with market rates. Done between companies that are in true market places, this concept transfers money between jurisdictions that both have taxation of both employees and corporations. However, when one of the entities are not in a true market place (most low tax jurisdictions are very small countries, or they are scavenging on a market place that is much larger than themselves) anymore, then this allows a transfer of funds from a place within the market economy to a place outside the market economy.

By placing the receiving end of transactions and SPV's in tax havens, they become instruments that transfer huge amounts of money from normal or high tax jurisdictions to low tax jurisdictions. It is very normal among multinational companies to place capital-intensive movable assets in SPV's in tax havens and then charge market rates to affiliates in normal and high tax countries for the services these assets provide. This is actually an unintended consequence of following the OECD's transfer pricing guidelines. The consequence is that when the affiliated company in the normal or high tax jurisdiction is charging services onwards to a customer, there is almost never any taxable profits in the normal or high tax jurisdiction because both the revenue and the cost is determined by market rates.

The principle behind mean that all the market fluctuations will benefit the owner in the lower tax jurisdiction while the affiliated companies providing the market and using the asset will have increasing costs as market rates increases. This system is ultimately leading to a significant transfer of pretax funds from countries with markets (developing or developed countries alike) to countries without markets (tax havens where the assets are not used at all).

The problem arises when all the multinational companies owning these assets are utilizing low tax jurisdictions to amass market adjusted earnings in these jurisdictions, whether this be rig rates, insurance premiums, interest rates, derivatives or other asset revenues. As long as tax havens are allowed to participate in the 'market' while not taxing the companies that are in these countries, these practices creates unfair competition towards the companies that are registered in normal or high tax jurisdictions and over time also creates massive problems for the global economy. It also creates a never-ending pressure for companies who have not utilized these practices to start utilizing them as they will else be less competitive.

TAX REGULATION ABUSE

Industrialized countries provide a huge service to extractive industry companies by providing a market for the goods they produce. Each country has set up a fiscal framework that is intended to provide a framework within which these companies can set up business and pay back to society a share of the benefits they earn in the country. Many companies are however trying to avoid paying the taxes that governments intended and use treaty shopping, i.e. the use of intermediaries in setting up businesses between countries, or tax havens to reduce the tax bill.

The use of intermediaries or tax havens are buried within the aggregated financial statements of the corporation and neither investors nor tax authorities have the full picture of the funds that go through these instruments. A lot can be done by closing the derivatives and mark-to-market loopholes, but there would still be attraction for using intermediaries and tax havens.

Country-by-country reporting is a significant step in the right direction of getting necessary information about key accounting figures and the distribution of these between operating countries, tax havens and home-bases. A key issue here is that the country-by-country reporting would need to encompass more than payments to various governments in order to improving information to key stakeholders.

In addition to tax regulation abuse, there are also tax mechanisms that have unintended consequences. These are mainly tax credit rules in home-base countries (dividend receiving countries) and withholding tax on dividends in operating countries:

- If there is a large discrepancy between tax depreciation rules in the operating country versus the home-base country (for example direct expensing vs tax depreciation over 5 years), these rule differences will defer dividends from the operating unit until the effect of the tax rules in the home-base country is in synchronization with the operating country. There is thus generally no point for an operating country to have more generous tax depreciation rules than the home-base countries except if there is a need for securing companies faster payback of investment due to increased political risk.

- Companies needs at least one way of being able to transfer funds back to the home-base country. This should be by dividending from after-tax funds. All other transfers are essentially pre-tax funds, and here countries can keep withholding taxes in place as long as they secure that companies can dividend after-tax funds. The only exception is if dividends go to low tax jurisdictions. Many countries would then like to retain the right to charge withholding taxes on these dividends.

By adjusting the tax depreciation closer to home-country rules and avoiding withholding taxes on dividends, countries are able to avoid some distortions in behaviour from the extractive company side.

TRANSFER MISPRICING

Transfer pricing is a legitimate instrument in valuing transaction cross-borders and cross-companies. The problem in transfer pricing is the *mispricing* that occurs where extractive companies are trying to enter into internal agreements whereby revenues are priced lower than market in the resource rich countries while costs are priced higher than market in these countries.

A lot of the mispricing is obviously intended as tax havens are very often an intermediary between the resource rich country and the home-base country. If this was unintentional there would have been no reason to include the intermediary in the first place.

Involving tax havens in the corporate structure is therefore a red flag with respect to the potential use of transfer mispricing (or corrupt practices, derivatives abuse, mark-to-market abuse or tax regulation abuse).

An extended Country-by-country reporting is a significant step in the right direction of getting necessary information about key accounting figures and the distribution of these between operating countries, tax havens and home-bases. A key issue here is that the country-by-country reporting would need to encompass more than payments to various governments.

In order to give the correct information, the country-by-country reporting would have to be based on pre-consolidated accounting numbers as these are the ones which show which country is taking the profits. Elimination of internal profits would thus have to be presented separately. This is however the way that most companies are consolidating their accounts, so this should follow closely the companies own processes.

CRIMINAL PRACTICES

Although the above cover most of the large-scale practices that some extractive industry companies and associated companies are using to transfer funds cross-borders, there are companies that are willing to enter into criminal practices to transfer funds. One of the large items that can transfer significant funds cross-borders is invoice forgeries whereby the extractive companies are approving and paying invoices that have no basis in reality. Such a practice is dependent on that people inside the extractive companies are participating at senior level, i.e. that it is the company itself that is initiating the criminal behaviour. This is mainly to the detriment of investor funding as it reduces profits for dividends to ultimate investors while loan debtors are kept unharmed due to that debt is being serviced.

Another practice is to enter into rebate arrangements with large suppliers in such a way that the full cost invoice goes to the operating unit while the rebate credit note goes to an affiliated company that entered into the rebate arrangement, often the home-base country. These rebates should be distributed between the operating units that have enabled the rebate, but this practice is not followed by all extractive companies. It should be noted though that not transferring (a relative share of) the rebate with the operating unit inflates the costs in the operating country and is a criminal practice on par with transfer pricing abuse.

Other practices includes forgery of transit documents, crossing borders illegally with part of the production and producing 'legal' origination and transportation documents for the further external sale and transportation of the produce once the goods has crossed the relevant border.

While an extended country-by-country reporting will not expose criminal activity directly, it is easier for investors and others to question the practices within a company when the information is open for the relevant parties. It should be in the interest of most companies to make sure that companies with practices that are malign to the countries they are operating in have to apply transparent reporting practices.

3. THE EXTRACTIVE INDUSTRIES

3.1. The extractive industries products are so important they define civilization

All industries claim their unique significance to human well-being. The extractive industries have a greater claim than most. They are so important to the development of civilization that they give their name to eras in history.

The Bronze Age and Iron Age are both named after the minerals humans had learned to extract and use: use that defined how people lived.

The industrial revolution was built on the back of steam that resulted from the burning of coal – a process that also changed our lives.

The golden era of post-war capitalism from 1945 to 1973 was based on cheap oil and the hope of limitless nuclear power.

Since the 1990s much has changed. It has become apparent that resources managed by the extractive industries are not limitless and that nuclear power is not (at least as yet) the panacea many had hoped for. In the light of that, we now seek our destiny and fortunes on the basis of another mineral: Silicon Valley is aptly named.

The impact of the extractive industries has been significant and enduring throughout history. It is as important today.

3.2. The significance of the extractive industries

The significance of the extractive industries has now been widely recognized. It is now appreciated that our well-being is, in no small part, dependent upon our successful management of the finite and therefore depleting inanimate resources that we entrust to the care of the extractive industries.

As a result there is now widespread international consensus in favour of increased transparency in the extractive sector as evidenced by, for example, the immense support from governments, companies, investors, financial institutions and civil society for the Extractive Industries Transparency Initiative[8].

As the Extractive Industries Transparency Initiative (EITI) notes[9]:

'The prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.

The management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.

The benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.

8 http://eiti.org/eiti/principles
9 ibid

Public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.

Transparency by governments and companies in the extractive industries is vital to enhance public financial management and accountability.'

The call for country-by-country reporting (CBC) by the Publish What You Pay (PWYP) campaign is a contribution to that process of public understanding based on transparent accountability. It is designed to enhance the contribution the extractive industries can make to sustainable development in the interests of those who live in the countries that host extractive industries' activity and in those countries that are dependent upon their output.

As PWYP argues[10]:

Promoting transparency of revenues and of extractive industry contracts is a vital first step towards alleviating the crushing poverty of ordinary citizens in many resource-rich developing countries around the world. It is fully consistent with internationally agreed objectives of good governance, corruption prevention, corporate accountability and sustainable development. Transparency is in the best interests of everyone concerned – citizens, companies, governments and the wider international community – and so we call on all relevant stakeholders to play their part in making it a reality.

3.3. The extractive industries can make and break a nation's economy

Oil has been the foundation of extraordinary prosperity for Norway. That is a reflection of its good fortune, the international developments at the time of discovery, its stable government and its ability to learn from others.

Even within Europe not all of have been so fortunate. The Netherlands is another European country apparently blessed with the good fortune of hosting a significant presence from the extractive industries but it has given its name to the so-called 'Dutch Disease'. This term was first used by The Economist magazine in 1977 to describe the decline of the manufacturing sector in the Netherlands after the discovery of a large natural gas field in 1959[11]. The observed consequence of hosting the EI was an increase in the host nation's currency's exchange rate. This increased the price of its non-extractive industries exports. Becoming uncompetitive, non-extractive industries activity was lost in the country and the well-being for the population as a whole reduced in a way that extractive industries activity may not compensate fully, but the effects would be lesser if the extraction industry were properly regulated and taxed on its activities. A much earlier example of the resource curse and its effect also outside the host countries is the negative effects on the Spanish economy following the huge gold imports resulting from the discovery, colonization and resource abuse of early Central and South America.

Much more significant, however, has been the host country side of the so-called 'resource curse'. Too often rather than benefiting a country's citizens; abundant timber, diamonds, minerals, oil and other natural resources have incentivized corruption, destabilized governments, monopolized economic benefits and led to poverty and war. These consequences of individuals and groups in society seeking to control natural resources

10 http://www.publishwhatyoupay.org/en/mission
11 http://en.wikipedia.org/wiki/Dutch_disease

for personal enrichment rather than for the benefit of communities are collectively known as the 'resource curse'.

The Publish What You Pay (PWYP) campaign believes that transparency of revenue streams paid to governments that host the extractive industries can lead to those governments being held responsible for managing those resources for the benefit of all citizens, as well as securing that the global community gets its fair share of the revenue generated whether it is developing nations or developed nations.

The goal of country-by-country reporting is to provide the same valuable information to all constituents:

1. It provides key stakeholders like investors with key, standardized information to prioritize their use of funds and give investors in their role as owners the information needed to enter into a dialogue with the companies about their priorities.

2. It levels the playing field among extractive industry companies as it forces less transparent companies to provide the same level of information as more transparent companies.

3. It provides regulators with key information they need to provide for good regulations in the extractive industries sectors.

4. It provides data to governments, analysts, media and the population at large that enables these to monitor and challenge companies and government institutions towards the most effective economic management of the revenue streams derived from the extractive industries.

5. It provides tax authorities with data in a standardized form about the extractive industry companies, reducing the cost of data collection, providing for better communication between tax authorities and companies and giving less room for criminal activities from those few companies that are willing to resort to such practices as it becomes more difficult to move funds from one jurisdiction to another to the extent that a tax authority has asked for insight into the records in a tax jurisdiction.

4. THE EXTRACTIVE INDUSTRIES AND THE PRIVATE SECTOR

4.1. The general viewpoint of extractive industry corporations

An extractive company will want to put itself in the best possible position with regard to (i) best possible access to resources, (ii) least possible (real) cost and (iii) least possible taxation. It is of particular concern of the extractive company to get as good terms as its competitors. Countries that are open to negotiations will find that extractive industry companies are hard negotiators in order to secure the best possible position for their corporation.

The ideal principle for both countries and companies is to have terms for access to resources and fiscal terms legislated in law so that companies do not fear that their competitors get better terms and they can present the conditions of the country in question as non-negotiable. This will be understood in the market place and it is much more transparent and predictable for the companies and their investors.

4.2. The ownership of mineral resources

The natural resources that the extractive industries exploit are not (with very rare exceptions) just anyone's to enjoy. They are owned by the states in whose jurisdictions they are found.

It is of course possible for the state in question to extract those resources itself. An example is in the United Kingdom when its coalmines were nationalized after World War 2. It still happens in Norway where Statoil is majority owned by the state. There are state owned oil and mining companies in many developing countries today.

Four of the world's largest oil companies are state owned. But the vast majority of the world's mineral resources are extracted and processed by private sector corporations. These companies can, of course, only do so because they have entered into partnership agreements with or have been granted licenses from the countries that have ownership of the mineral resources they extract. The result is that extractive industries are dominated by what in many cases are symbiotic partnerships between the state and public sectors.

4.3. The role of the host state in the extractive industries

If, as is commonplace, the host state for an extractive industries activity decides that a private sector company or companies should take the lead in exploiting the natural resources found within its jurisdiction, either alone or in partnership with a state owned enterprise then it is usual that a Production Sharing Agreement/Contract (PSA or PSC) or a Mineral Development Agreement (MDA) (or a contract with a similar name) will be signed between the parties. As a result the right of the state to benefit from those resources is now committed to contractual form. We will below refer to these contracts collectively as Development Agreements or DA's.

A DA will usually specify:

- The geographic area in which the private sector company may search for and extract resources.
- The time period during which it is allowed to undertake that activity.
- The capital it must invest, at a minimum, in this activity and the time period and form in which this capital must be made available. This is particularly important if the state is a partner in the project and has to also provide capital, either in cash or in kind (the grant of the DA often being considered a payment in kind in this regard).
- Any minimum performance requirements that must be met if the contract is not to be terminated early e.g. the agreed maximum time period until commercial extraction activity is undertaken or maybe minimum quantities to be extracted annually.
- The way in which the resulting extracted products will be priced for sale;
- The costs that may be offset against the sales price when calculating profit, and whether or not those costs must be incurred locally or not. There are, for example, frequently clauses requiring the employment of local labour.
- What right of access the private sector company has to infrastructure such as roads, railways and ports within the territory; whether it is required to pay for the development of these if they are not available or what rent it must pay if it is to access existing facilities.
- How profits will be calculated if not in accordance with standard accounting procedures or tax laws.
- At what rate the host government will be remunerated for its participation in the activity. Likely rewards include:
- A fee on signing the contract;
- An annual fee thereafter or an annual rental payment in respect of the territory to which the private sector company has access;
- A royalty expressed as a percentage of the sale price for all minerals extracted;
- Import duties (although these are frequently waived under the terms of DA's);
- Sales taxes (although again these are frequently waived as royalties are charged instead);
- Dividends or profit shares based upon the share of profit attributable to any state owned company that is a partner in the undertaking. Payment of such sums requires considerable care in determining how profit is to be calculated if it is not to be manipulated by either party;
- Taxes in respect of staff employed;
- Taxes on profits generated from the activity. Hopefully these will be calculated in accordance with the standard tax law of the jurisdiction but this is frequently not the case, with the taxation arrangements being agreed contractually and frequently for the duration of the contract under what are called 'tax stabilization clauses'.
- Withholding taxes on international payments;
- Other sums to suit particular circumstances;
- When these sums are due;
- Whether these sums are due in cash or in kind e.g. some payments are made by giving oil or other minerals to the State for it to sell;
- The right of the State granting the contract to audit these sums;
- Whether or not the payments made are to be treated as confidential or not.

4.4. The advantages of Development Agreements

There are obvious advantages to DA's:

- The State gets access to capital it does not have available itself;
- Expertise is imported into the State;
- Risk for the State can be mitigated;
- Timescales to production can be reduced;
- The cost of accidents, environmental dame and other unforeseen issues might be outsourced;
- A better price might be secured and revenues might be advanced.

Nothing in this paper suggests that there is anything wrong with a State granting a DA, except for the fiscal sections, where a negotiable position will always lead to maximum downward pressure on the state's revenue (royalty and taxes). It would be better if the fiscal terms were legislated.

4.5. The problems of Development Agreements

There are, however, many real problems inherent within the structure of many DA's:

- The state has now lost control of its assets and has greater difficulty accounting for them as a consequence.
- The DA frequently creates a veil of opacity over the extractive activities within a state that makes it very hard in many cases for any information to be secured on what is really happening within them. This applies not only to third parties with that interest, but to politicians, regulators and the citizens of the host nation.
- Details of payments made to the government in exchange for the DA are often hard to secure, and data with which to verify the credibility of that data even harder to procure, and yet in many states this information is at the very core of the choices to be made about the effective economic management of that jurisdiction.
- This veil of opacity makes it easier for corruption to take place.
- The same veil of secrecy also makes it harder to hold the company that benefits from the DA to account for its actions within the jurisdiction. This is true if its local accounts are not required to be placed on public record (as is, too often, the case). It is even more true if its parent and immediately associated companies are located in tax havens (which is, again, too often the case) meaning that they too will place no information on their activities on public record. As such these companies cannot be assessed to determine if they are tax compliant or not. Tax compliance is seeking to pay the right amount of tax (but no more) in the right place at the right time where right means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes.
- As a result it is hard to meet the criteria for effective management of the extractive industries within a jurisdiction suggested by the EITI and noted above because:
- Data is not available to assess whether the use of natural resource wealth is prudent, or not.
- In particular, those in government or at least in opposition to government whose job it is to hold government to account will not have this data, undermining the accountability of the state for its action.
- The impact of changing economic circumstances cannot be assessed.

- Public understanding of government revenues and expenditure over time will be limited.
- The opacity of the government and companies in the extractive industries will undermine public financial management and accountability.

4.6. The absence of special reporting requirements for EI companies

Despite the obvious importance of the extractive industries for so many countries, and despite the extraordinary power that DA's grant to individual companies to influence the well being of their host states there are almost no special accounting requirements in place for companies within the extractive industries.

To date International Financial Reporting Standards have only required very limited additional disclosure by companies in the extractive industries. In particular IFRS 6 on Exploration and Evaluation of Mineral Resources requires disclosure of information that identifies and explains the amounts recognized in an EI company's financial statements arising from the exploration for and evaluation of mineral resources, including[12]:

- its accounting policies for exploration and evaluation expenditures including the recognition of exploration and evaluation assets.
- the amounts of assets, liabilities, income and expense and operating and investing cash flows arising from the exploration for and evaluation of mineral resources.

This data is, however, required at group consolidated level.

There is no requirement at all that the accounts of operating companies located in host states belonging to Extractive Industry companies place their accounts on public record so that local information is available on the activities of multinational corporations even though most DA's are held by local subsidiaries of multinational corporations.

There are frameworks that are already used in practice for defining reserves and resources measures (the Petroleum Resource Management System for oil and gas and the CRISCO Template for minerals). These definitions were not, however, developed for accounting purposes, but rather for companies to use to manage their businesses. As such they are not used as yet in accounting disclosure.

It is true that many (but by no means all) extractive industries companies make extensive voluntary disclosures about their activities at local level, but this almost invariably focuses on reserves management and not revenue streams or payments to governments. This data is useful, but it is often inconsistent between companies and even across time frames. It is not consistently available and is often leaves out many aspects of information needed to monitor effectively the activities of the extractive industries within a state. In addition much of this data is not audited, which has created difficulties in the past.

Country-by-country reporting is intended to provide the necessary transparency for the trading of the multinational corporations that benefit from DA's in developing countries so that the extractive industries in those places comes under the necessary scrutiny to ensure they can fulfill its promise of delivering sustainable development for all who live in countries that host such activity.

12 http://www.iasplus.com/standard/ifrs06.htm

In particular, country-by-country reporting is intended to stress particular issues for the EI including the significance of:

- Reserves, their valuation, use and potential for generating future revenue;
- Revenue streams payable to governments of special significance in the extractive industries;
- The significance of reporting trades in goods and trades separately from those in derivatives, hedging, futures and other financial products in the extractive industries;
- The need to highlight cash flow to reconcile accruals accounts with payments made to governments so that the latter can be held to account for the use of the funds that they receive;
- The significance of investment and disinvestment decisions by location;
- The importance of the overall net investment a multinational corporation makes in a location as indication of its commitment to its operations in that place, especially in the event of problems arising, for example of an environmental nature, for which it has liability.

These particular needs are reflected in the design of country-by-country reporting suggested in the next chapter.

5. WHAT IS COUNTRY-BY-COUNTRY REPORTING?

5.1. Is it too much to ask?

Have all subsidiaries file entity or country accounts and information to notes to the accounts prepared under the same accounting rules as the consolidated group accounts are prepared under in order for the company to be able to present consolidated group accounts. These may not be public, but they must be available for the parent company. Without this information readily available, these companies will not be able to comply with home country regulation with respect to consolidated financial statements. This information is often collected in reporting packages or directly within mainframe consolidation software, and there is in every multinational company guidelines on how each entity shall collect, standardize and report this information to facilitate the consolidation process. Most multinational companies are announcing their 4th quarter earnings fairly early in January for the previous year, a fact that illustrates how coordinated and stringent these consolidation processes are although it takes approximately 1-2 months before audited financial statements are released.

- have all the tax information available at entity level on profits earned and taxes paid from all the subsidiaries in order that taxes are either reported and paid correctly or tax credits are accumulated for the future point when dividends are received at parent company level (or any subordinated company level) for tax credit purposes (tax credits are credits earned from local taxes paid and is used to protect companies from being double-taxed in the parent country). This tax information is kept for the entire length of an operation and even longer as this information is necessary and has to be documented towards the tax authorities in the home country as soon as dividends are made and tax credits are claimed.

- Adding to these two legally required processes (consolidated financial statements and home country tax return) comes the internal management reporting that collects information at a far more detailed level for each operation in the extractive industry company. This information is available for higher management, and forms part of the easily accessible knowledge base that the companies can use to comply with a country-by-country reporting requirement.

Country-by-country reporting is not asking for any information that is not or should not be in this key documentation for the corporations. This includes volumes and prices for internal sales of products (and services) between affiliated companies until the produce (or service) is sold to outside customers. To the extent that a company produces arguments that this information is lengthy or costly to produce, they are essentially saying that it is lengthy and costly for them to produce consolidated group accounts and home country tax returns, a fact contradicted by the early earnings releases following each quarter. Some companies are trying to confuse the issue by talking about different types of reporting or that they do not produce financial statements in some countries. This does however not mean that the information above is not produced for these two purposes internally.

Country-by-country reporting is that a corporation split the information that it already has at entity or country level in the published group financial statements.

If a corporation does not have this information, it means that the company does not fulfil its filing and documentation requirements in their home country or is less able to manage their company, and thus a country-by-country reporting will help them improve their internal control environment to comply with existing regulation and management needs.

5.2. The disclosures to be made by country-by-country

The proposed disclosures to be made by those multinational corporations required to undertake country-by-country reporting within the extractive industries would as a result of the above be as shown in the table that follows.

This table also notes those occasions when due to immateriality more limited disclosure might be made.

Disclosure	Notes
1. The name of each country in which the multinational corporation operates.	
2. The names of all its companies trading in each country in which it operates;	• The disclosure is required by company by country: a subsidiary trading in more than one country may therefore be disclosed more than once; • The disclosure required is of all entities subject to any part of the consolidation process i.e. disclosure is required of all subsidiaries and associated companies unless they are dormant throughout the period to which the accounts relate.
3. A full country-by-country reporting financial statement is required for those jurisdictions meeting specified criteria that ensure they are considered material for disclosure purposes.	A full country-by-country reporting financial statement will be required if one of the following four situations arises: 1. The jurisdiction is one in which upstream extractive industries activity occurs. 2. Turnover plus hedging, derivative and financial income (as per accounts pro-forma noted below) in the jurisdiction exceeds US$5 million in the reporting period; 3. The net value of tangible fixed assets in the jurisdiction increases by more than US$ 5 million in the reporting period. 4. Turnover plus financial income in the jurisdiction exceeds 5% of the total consolidated turnover plus financial income of the reporting entity during the reporting period. If any of these circumstances arises then the country for which disclosure is required is considered highly material for country-by-country reporting purposes and full audited disclosure of its activities within that jurisdiction is required. A financial *de-minimis* by country is specified because materiality for country-by-country reporting purposes must always be determined at the level of the country and not at the level of the reporting entity.

4. A more limited country-by-country reporting financial statement is required for those jurisdictions meeting specified criteria that ensure they are considered to have reduced materiality for disclosure purposes. they are considered material for disclosure purposes.	This more limited requirement will exist if one of the following situations arises: 1. Turnover plus hedging, derivative and financial income (as per pro-forma noted below) in the jurisdiction exceeds US$1 million in a reporting period; 2. The net value of tangible fixed assets in the jurisdiction increases by more than US$ 1 million in a reporting period; 3. The situations noted in part (3) section (3) above have not arisen. In these cases the activities of the reporting entity may be material to the country for which disclosure is required, but that significance is not sufficient to require the additional cost of audit. As such unaudited disclosure of a more limited range of data (as noted below) will be sufficient country-by-country reporting for these jurisdictions.
5. Disclosure of a trading presence within the jurisdiction is required but no further financial disclosure is necessary.	This situation will arise where either: 1. Turnover plus hedging, derivative and financial income (as per pro-forma noted below) in a jurisdiction is less than s US$1 million on a non-netted basis in a reporting period and; 2. The net value of tangible fixed assets increased by less than US$ 1 million in a reporting period. If these situations arise then the disclosure to be made for the country in question is unlikely to be material to any understanding of the financial statements. In addition the activity of the reporting entity is likely to be immaterial to the host country itself and as such the cost of financial disclosure is not necessary bar a note to say that the conditions for disclosure have not been met in the jurisdictions in question but that a permanent establishment of the multinational corporation does exist in the jurisdiction and under which names it operates. To ensure reconciliation of the country-by-country reporting data to the full financial statements activity for all these otherwise undisclosed countries should be aggregated and disclosed together as 'other individually immaterial jurisdictions'.

5.3. Pro-forma layout of country-by-country reporting disclosures

The full disclosure required for a jurisdiction to which audited country-by-country reporting disclosure would be required under this proposal (for the reasons noted in (4) above) is outlined in the table below (with the items in italics not being required in the case of those jurisdictions to which item 4 above relates).

It should be noted that it is the accounting numbers going into the group consolidation that is to be provided. Any eliminations being done at group level to arrive at the group consolidated financial statements should be reported in a separate column by line item so that the sum of country-by-country reporting and eliminations should match the group financial statement with respect to the individual line items.

The table should be provided as such in order to standardize between companies:

- 1 text column (repeated as necessary)
- 1 column identifying which consolidated group financial statements lines each item belongs to (not repeated)
- 1 column covering eliminations to allow country-by-country reporting to tie in with financial statement data (not repeated)
- X number of columns covering country-by-country reporting

The auditor's report should state that country-by-country reporting is in line with audited supporting data for the consolidated group financial statement.

Profit and loss account	Volume	Group Currency unit Individual items	Group Currency unit Totals
Turnover by product – third party	X	X	
Turnover by product – intra-group	X	X	
Total			X
Hedging, futures and derivative sales – third party	X	X	
Hedging, futures and derivative sales – intra group	X	X	
Hedging, futures and derivative purchases – third party	X	(X)	
Hedging, futures and derivative purchases – intra group	X	(X)	
Revenues not derived from sales of products or involving derivatives – third party		X	
Revenues not derived from sales of products or involving derivatives – intra-group		X	
Total			X
Purchases – third party		(X)	
Purchases – intra-group		(X)	
Total			(X)(X)
Labour costs			(X)
Number of employees (note)	X		
Provisions in the extractive industries for:			
Signature bonuses		(X)	
Ground rents		(X)	
Royalties		(X)	

Import duties		(X)	
Export duties		(X)	
Sales taxes		(X)	
Taxes due on payroll costs		(X)	
Taxes due on dividends if not shown elsewhere		(X)	
Withholding taxes if not included in tax charge		(X)	
Local government taxes due		(X)	
Other payments due to government		(X)	
Total provision for payments due to government and its agencies			(X)
Operating profit before financing			X
Finance income		X	
Finance expense		(X)	
Net finance cost			X
Operating profit after financing			X
Current tax charge		(X)	
Deferred tax charge		(X)	
Tax charge			(X)
Net profit after tax			X
Average exchange rate between group currency and local currency (profit & loss and cash flows items)			X
Year-end exchange rate between group currency and local currency (balance sheet items below)			X
Balance sheet	**Type of item**	**Currency unit Individual items**	**Currency unit Totals**
Total tangible assets – original value		X	
Total depreciation tangible assets		X	
Total intangible assets – original value		X	
Total depreciation intangible assets		X	
Total fixed assets			X
Current assets	Third party	X	
	Intra-group	X	
Total current assets			X

Current liabilities	Third party excl tax	X	
	Corporate Tax	X	
	Other liabilities to host gvmnts		
	Intra-group	X	
Total current liabilities			(X)
Net current assets			X
Deferred liabilities	Third party excl tax	X	
	Corporate Tax	X	
	Other liabilities to host gvmnts		
	Intra-group	X	
			(X)
Net assets, equivalent to shareholder funds			X
Cash flow		**Current year**	**Cumulatively**
Intra-group fees and services paid (not purchases of goods)		X	X
Corporation tax paid		X	X
Total paid to host government including corporate tax		X	X
Dividends paid		X	X
Reserves and production data	**Total pre-production reserves**	**Current year production**	**Cumulative production**
Product 1 (e.g. oil)	X	X	X
- of which intra-group sales to country 1		X	X
- of which intra-group sales to country 2		X	X
- etc			
Product 2 (e.g. gas)	X	X	X
- of which intra-group sales to country 1		X	
- of which intra-group sales to country 2		X	X
- etc			
Product 3 (e.g. NGL) etc	X	X	X

6. COUNTRY-BY-COUNTRY REPORTING AS ACCOUNTING INFORMATION

All the benefits of country-by-country reporting noted in the previous chapters and in the attached arguments for country-by-country reporting arise because:

a. country-by-country reporting data is accounting information, and
b. as accounting information it can:
   i. be consistently supplied;
   ii. be standardized and consistently applied across countries, corporations and accounting regulations
   iii. utilize already audited data supporting the group financial statements;

This is important to note. It has been argued (not least by the International Accounting Standards Board) that:

a. Country-by-country reporting is not accounting data;
b. It is corporate social responsibility (CSR) data;
c. CSR data cannot be included in financial statements even if derived from the general ledger of a company and entirely reconcilable with it, as country-by-country reporting data is.

This position is illogical as the information is already in the financial statements as the group financial statements are based on, and is an aggregated reporting of, accounting data. But what it does mean is that consideration has to be given next to what is the purpose of financial reporting before suggesting how, and with what authority, country-by-country reporting data must be incorporated within it.

6.1. The purpose of financial reporting

There are a number of sources available for considering the purposes of financial reporting.

The opinion of the International Accounting Standards Board (IASB) is obviously of considerable significance, but is by no means the only opinion of consequence.

The IASB opinion will be considered first here, and its opinion will then be contrasted with that of others before a conclusion is drawn:

6.2. The opinion of the International Accounting Standards Board

The IASB issues International Financial Reporting Standard (IFRS) that are now considered the leading authority on the information required to be included in the financial statements of multinational corporations. IFRS are legally binding in the European Union and many other countries. They do, in effect, have the status of law.

The IASB issued the first part of its new Conceptual Framework for Financial Reporting in 2010[13]. This explains its philosophy on accounting. It was issued jointly with the Federal Accounting Standards Board in the USA, so adding to its impact since the USA and Japan are the only two major Western nations not adopting IFRS as yet. The Conceptual Framework says (paragraph OB2):

> *The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity. Those decisions involve buying, selling or holding equity and debt instruments, and providing or settling loans and other forms of credit.*

It does quite clearly, as a result, indicate that it believes that the financial reporting of private companies is intended solely to assist those engaged in financial markets.

It makes this even plainer when saying (paragraph OB 10):

> *Other parties, such as regulators and members of the public other than investors, lenders and other creditors, may also find general purpose financial reports useful. However, those reports are not primarily directed to these other groups.*

These statements and the statement that IASB does not consider country-by-country reporting as accounting data clearly indicate that the IASB has chosen to ignore that:

- Investors are the stakeholder group that maybe most clearly will have a direct interest and use of the information required by country-by-country reporting
- All public interest bodies that might have interest in financial reporting including:
    - Tax authorities, although tax liabilities are based on such accounts;
    - Regulatory authorities of all sorts, including environmental agencies;
    - Those enforcing company law;
    - Those with macro-economic concerns;
    - Those with planning obligations;
- The interests of the general public who do not engage with the financial markets;
- Anyone with long term considerations, since decisions in financial markets are invariably short-term in nature;
- Those with concern about the broader economic impact arising beyond the financial markets as a consequence of the trading of multinational corporations, including the interests of:
    - Customers of the multinational corporation;
    - Employees of the multinational corporation, except as creditors;
    - Suppliers of goods and services to the multinational corporation;
- The special needs of emerging economies.

In noting that the IASB has chosen to ignore a very wide range of interests, in addition to the investor group that it actually states that it caters to, when defining what it sees as the use of the general purpose financial statements produced by multinational corporations it is important to understand that it has in the process chosen to ignore the stated objectives of the International Accounting Standards Board's parent body – the International Accounting Standards Committee Foundation. This says in its constitution[14]:

13 Available from http://www.ifrs.org/Current+Projects/IASB+Projects/Conceptual+Framework/Conceptual+Framework.htm on payment of a fee

14 http://www.iasplus.com/resource/2009revisedconstitution.pdf

The objectives of the IASC Foundation are:

(a) ***to develop, in the public interest, a single set of high quality, understandable and enforceable global accounting standards*** *that require high quality, transparent and comparable information in financial statements and other financial reporting* ***to help participants in the world's capital markets and other users*** *make economic decisions;*

(b) to promote the use and rigorous application of those standards;

(c) in fulfilling the objectives associated with (a) and (b), to take account of, as appropriate, the special needs of small and medium-sized entities ***and emerging economies****; and*

(d) to bring about convergence of national accounting standards and International Accounting Standards and International Financial Reporting Standards to high quality solutions.

The emphases in bold in the statement have been added. Those highlighted items when compared to the stated objectives of the International Accounting Standards Board clearly indicate that the IASB:

- Either ignores the public interest contrary to the duty imposed on it, or believes public duty and the interest of financial markets are equivalent;
- Ignores the interests of the state sector entirely in undertaking its duties, even though its edicts have the force of law;
- Ignores all financial data that might be of use to those with a public interest in multinational corporations, in the process implying that this is either not needed or must be provided in another set of financial statements, so undermining the objective of there being a single set of financial statements supplied by a multinational corporation;
- Ignores the need for transparent data when it refuses to supply information that is available but which it deems is not needed because it considers it is not of interest to those engaged in financial markets. This results in opacity for those other users that the International Accounting Standards Foundation recognizes exist but which the IASB ignores;
- Ignores the needs of emerging economies, many of which have a particular interest in the extractive industries but relatively few of which have interest in financial markets and where even fewer people have engagement with such activity.

In this circumstance it is very clear that unless pressure is brought to bear on the International Accounting Standards Board for immediate reform of its agenda, which it has taken more than a decade to produce, there is little or no chance of financial information required by the public, state, regulators and commercial interests not engaged in the financial markets being supplied by general purpose financial statements produced solely under the aegis of International Financial Reporting Standards. In that case the need for other agencies, including governments and supra-national agencies to intervene is apparent.

More concerning is the fact that the IASB is clearly ignoring even the interests of its most clearly defined interest group; the investors. Publish What You Pay has been in contact with both small, medium and large investors and investor groups and a very large majority of these have been clearly in favour of country-by-country reporting as they immediately recognize, once properly outlined what country-by-country reporting constitutes, the value of country-by-country reporting for them as investors. There is a concern that the IASB does not involve its major user groups to an adequate extent, and that the reporting guidelines coming from the accounting standard setters are mainly catering to desires from companies to report less rather than more and thus shield corporations from potential questions from investors and investor groups.

6.3. The purpose of general purpose financial reporting: other agencies.

The International Accounting Standards Board is not the only agency to have considered the purpose of general purpose financial reporting. Others within the accountancy profession have done so, as have supra-national agencies.

As long ago as 1975 the UK's Accounting Standards Steering Committee, a body that can be seen as a precursor of the current International Accounting Standards Board published a seminal document entitled the Corporate Report[15]. That report said that published accounts should enable a user to appraise information on:

1. *The performance of the entity;*
2. Its effectiveness in achieving stated objectives;
3. Evaluating management performance, including on employment, investment and profit distribution;
4. The company's directors;
5. *The economic stability of the entity;*
6. *The liquidity of the entity;*
7. *Assessing the capacity of the entity to make future reallocations of its resources for either economic or social purposes or both;*
8. *Estimating the future prospects of the entity;*
9. *Assessing the performance of individual companies within a group;*
10. *Evaluating the economic function and performance of the entity in relation to society and the national interest, and the social costs and benefits attributable to the entity;*
11. *The compliance of the entity with taxation regulations, company law, contractual and other legal obligations and requirements (particularly when independently identified);*
12. *The entity's business and products;*
13. Comparative performance of the entity;
14. The value of the user's own or other user's present or prospective interests in or claims on the entity;
15. *Ascertaining the ownership and control of the entity.*

It can quite reasonably be argued that very little has changed since 1975 in this regard. Although country-by-country reporting had not been thought of in 1975 it can also quite reasonably be argued that country-by-country reporting would add, in some cases considerably, to the understanding of those issues italicised.

It is important to note that there is good evidence for suggesting that those with interest in financial statements have almost certainly not changed much since 1975. The Corporate Report identified these as:

15 http://www.ion.icaew.com/ClientFiles/6f45ef7e-1eff-41ff-909e-24eeb6e9ed15//The%20Corporate%20Report2.pdf

- The equity investor group (shareholders)
- The loan creditor group (banks and bondholders)
- The analyst-adviser group who advise the above groups
- Employees
- The business contact group
- The government
- The public.

It is also curious to note in contrast to the IASB that UNCTAD in their 2008 report entitled 'Guidance on Corporate Responsibility Indicators in Annual Reports'[16] said that in their opinion financial statements might be used by:

- Investors and financial institutions;
- Business partners;
- Consumers;
- Employees;
- Surrounding community;
- Civil society organizations; and
- Governments and their institutions.

The groups are defined slightly differently in each case, but the overlap is almost identical and only differs in emphasis. It seems there is widespread agreement on this issue. As, indeed, would appear to be the case when noting the thinking of the International Accounting Standards Committee Foundation, recorded above.

6.4. Assessing the IASB's claim that financial statements are only prepared for the use of suppliers of capital (and that suppliers of capital have no use of country-by-country reporting)

It seems clear from these three sources, to which many more could be added, that the IASB's claim that the data needs of the providers of capital to companies are paramount when assessing the benefits of information supplied in financial statements is straightforwardly wrong. The benefits other users derive must be considered as well, and in capacities other than as providers of capital. That being said, it is also important to recognize the difference in opinions between investors and investor groups that to a large extent would find country-by-country reporting highly useful for investment purposes and the IASB's statement that country-by-country reporting is 'not accounting data' and should thus not form part of the financial statements of corporations.

In addition, the IASB claim that it need only determine whether to include data in International Financial Reporting Standards on the basis of its usefulness to the providers of capital is also wrong. The single set of accounts it must promote must, according to its own governing constitution, meet the information needs of all who make economic decisions based on the activities of corporations, and supply them with the 'high quality, transparent and comparable information' they need.

16 http://www.unctad.org/en/docs/iteteb20076_en.pdf accessed 15-8-08

Those who might demand such information are, to combine the list of stakeholders noted by The Corporate Report and UNCTAD:

- Investors (!)
- Loan debtors (!)
- Employees;
- The business contact group;
- Consumers;
- Civil society organizations;
- Governments and their institutions;
- The public.

The very fact that country-by-country reporting is now being discussed by so many varied organisations (the International Accounting Standards Board (IASB), the Organisation for Economic Cooperation and Development (OECD), the European Union (EU), national parliaments (amongst them the US), development agencies, trade unions, and more) is the clearest indication that these groups have an interest in general purpose financial reporting by the world's multinational corporations.

As this report shows, what all these organisations and Publish What You Pay are asking for is financial data that can only be generated from the accounting systems of the multinational corporations from whom information is being requested. There is no other way in which profit and loss account, cash flow and balance sheet information can be produced. The fact is that this information is already being produced (or should be produced) when the corporations collect information to adequately fulfil existing requirement towards group financial statement consolidation and preparations of home country tax returns.

Under these circumstances the persistent suggestions made by the International Accounting Standards Board and some other accounting institutes that country-by-country reporting is not accounting data are plainly wrong: unless they are suggesting that duplicate accounts be prepared to disclose country-by-country reporting data (which is, of course directly contrary to the constitutional obligation of the IASB, noted above) there is no other way to supply country-by-country reporting data but by including it in general purpose financial reports of multinational corporations.

It is for this reason that if the International Accounting Standards Board refuses to undertake the necessary reforms to ensure that this data is disclosed, others must take the initiative in undertaking this reform in their place.

7. WHY THE ALTERNATIVES TO CBC DON'T WORK

It is important to note that alternatives to country-by-country reporting have been suggested for the disclosure of the information needed to hold multinational corporations operating in the extractive industries and the governments to which they make payment to account for their activities. It is important to explain, albeit briefly, why these alternatives are not acceptable before moving on to discuss the regulations needed to deliver country-by-country reporting.

7.1. Corporate social responsibility

The European Commission's definition of CSR is[17]:

> *'A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.'*

The reasons why the information required on the operations of the extractive industries and its payments of tax are not corporate social responsibility issues become apparent immediately:

- The information required must be mandatorily supplied or it will not be made available. Voluntary disclosure might attract very limited disclosure by a very few companies but will never provide the information needed on an industry and country wide basis;
- The information required is not related to environmental and social concerns as such; the information required is hard financial data about financial performance.

As such the corporate social responsibility environment is wholly inappropriate for the supply of the required data.

7.2. PricewaterhouseCoopers' Total Tax Contribution

The largest firm of accountants in the world, PricewaterhouseCoopers (PWC) has developed the Total Tax Contribution (TTC) framework of which they say[18]:

There is increasing pressure on companies to be more transparent about their tax policies and how much tax they pay. We suggest that enhanced transparency is important in stakeholder engagement.

Your stakeholders will be looking for more and clearer information on your tax affairs. They want to see high quality information in three broad areas:

- *tax strategy and risk management*
- *tax numbers and performance*
- *total tax contribution and the wider impact of taxes*

17 http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm
18 http://www.pwc.co.uk/eng/issues/communicating_your_total_tax_contribution.html

Following discussions with companies and stakeholders we've developed a suggested framework – the Tax Transparency Framework – for communicating the company's tax position in its full context. The Framework looks at potential disclosures in each of the above three sections.

PWC has expended considerable effort[19] in promoting the TTC as an alternative to country-by-country reporting, including with the International Accounting Standards Board (IASB), Organization for Economic Cooperation and Development (OECD) and European Union (EU).

However, it is not an alternative to country-by-country reporting for these reasons:

a. It is voluntary, and therefore fails completely to meet the need for mandatory disclosure of data;
b. It is not necessarily country-by-country reporting data: it can be published on a group wide basis and therefore does not provide the information needed to ensure data is published for each host country with which an extractive industries multinational corporation contracts;
c. Payment of individual taxes need not be disclosed. This means no analysis is possible and because the taxes covered exceed in scope those covered by the Extractive Industries Transparency Initiative no comparison with the EITI is possible either, unlike the country-by-country reporting disclosure noted above;
d. No accounting or volume data that forms part of financial statements need be disclosed. This means, for example, that data on corporation tax paid might be published but no information on revenues, profits or volumes need be published and as such no data exist to test the credibility of the disclosures made, or their comparability, or their trend over time is available meaning that the information published has no real accounting relevance. True accounting data always requires comparison to be meaningful.
e. No distinction is made between taxes borne by the company e.g. taxes on profits and taxes paid by the company as agent; e.g. taxes deducted from staff salaries. As such the data published is in accounting and economic terms largely meaningless.
f. The TTC system is very expensive to implement (which is potentially why it is promoted, as a lot of effort has been put into it already). Country-by-country reporting data has however to be available in order for a company to prepare its consolidated group financial statements and tax returns already. As such minimal additional accounting costs should be involved in country-by-country reporting and the scope of audit disclosures noted above have been restricted to ensure that additional audit costs are for all practical purposes mitigated. On the other hand the PWC TTC requires that data that the company does not prepare now and which has little or no meaning for other purposes, such as VAT expenses incurred that it cannot reclaim, has to be disclosed. This makes the preparation of TTC data both harder and more expensive than country-by-country reporting.
g. The TTC data is not backed by audit opinions, undermining its credibility.

The PWC TTC is neither an alternative to nor even a poor substitute for country-by-country reporting.

7.3. PricewaterhouseCoopers' Total Tax Contribution

Publish What You Pay is, of course, a strong supporter of the Extractive Industries

19 See for example http://uk.sitestat.com/pwc/uk/s?ukws.eng_publications.pdf.tax_transparency&ns_type=pdf&ns_url=http://www.pwc.co.uk/pdf/tax_transparency_nov10.pdf

Transparency Initiative (EITI). It has proved enormously successful in achieving the following:

- Raising awareness of the real issues of concern within the extractive industries;
- Forcing some governments to become aware of these issues;
- Involving civil society both nationally and internationally in this process;
- Increasing the transparency of the extractive industries in some countries.

The existence of country-by-country reporting will not in any way remove the need for the Extractive Industries Transparency Initiative. Indeed, country-by-country reporting disclosure is designed to complement and assist the EITI process.

The Extractive Industries Transparency Initiative cannot however provide an alternative to country-by-country reporting. This is because:

a. It is voluntary and mandatory disclosure is needed;
b. The EITI is often prepared on a country wide basis meaning that multinational corporations in a country are not individually reported;
c. The Extractive Industries Transparency Initiative only operates at a national level, meaning payments that are moved out of the national domain are ignored, which ignores tax risk due to such issues as transfer mispricing and use of tax havens;
d. There is no consistent basis for accounting and reporting under the Extractive Industries Transparency Initiative;
e. The EITI does not deliver any accounting data to allow assessment of the data on payments made, a weakness it shares in common with PWC's TTC;
f. Although the reconciliation of the EITI data to receipts by governments is audited the data disclosed by companies is not always subject to an audit process, and that means that country-by-country reporting data is likely to be more reliable, which will in turn enhance the EITI process.

PWYP is committed to the EITI, but not as an alternative to country-by-country reporting.

7.4. International Financial Reporting Standard 6

The International Accounting Standards Board is supposedly updating IFRS 6 for the Extractive industries. There are good reasons for presuming that this will not include a requirement for country-by-country reporting data. These include:

a. Clear indication being given by the International Accounting Standards Board that stakeholder demands for country-by-country reporting would not be taken into account when deciding the issue as the IASB believes, contrary to its constitutional requirements and the demonstrated interest of individual investors and investor groups, that they need only take into account the needs of financial markets when determining the use of financial statements. The question arises what the definition of financial markets are when the interest of investors are seemingly ignored.
b. The extraordinary and protracted delay in considering this issue. Consultation on it closed in the summer of 2010 and the International Accounting Standards Board will not even consider the results of the consultation process on whether country-by-

country reporting is an issue they need to consider until the autumn of 2011 at the earliest. This makes the prospect of an IFRS before 2016 unlikely.

It has to be concluded that this is not a serious attempt at addressing this issue and that alternatives have to be found.

7.5. Dodd-Frank and why more could be done

The regulations enacted in section 1504 of the Dodd-Frank Act[20] in the USA have not yet been brought into force so, as yet, quite what they will entail is not yet known. What the law does say is this:

> *Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in the annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of a resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas or minerals, including (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas or minerals; and (ii) the type and total amount of such payments made to each government.*

This law is, of course, welcome and represented a substantial step forward in the transparency of the extractive industries but it does not encompass the scale of disclosures noted above that represent country-by-country reporting for the extractive industries. So, whilst they are mandatory (and that is, of course, welcome) they do not require:

a. The disclosure of accounting data to assess the appropriateness of the payments made;
b. Reserves and production data;
c. Data on investments by the multinational corporation in host nations.

As a result while Publish What You Pay in the USA has made significance progress in establishing transparency in the extractive industries by ensuring this regulation has been passed into law it represents a lowest common denominator for the disclosures needed, and does not, unfortunately, meet the needs of many users of financial statements, including investors. For that reason the country-by-country reporting data proposed in this report is considered more beneficial to the disclosure required by Dodd-Frank.

As a result of these considerations it is considered essential that full country-by-country reporting be implemented in Norway, EU and nations around the world.

20 http://resources.revenuewatch.org/sites/default/files/Dodd-Frank%20bill_Sec%201504.pdf

8. COUNTERING THE OBJECTIONS TO COUNTRY-BY-COUNTRY REPORTING

8.1. Counter arguments exist, but are upon examination shown to be invalid

A number of objections to country-by-country reporting are frequently raised. For example, in May 2009 the UK based publication Accountancy Age reported that Barry Marshall, UK head of tax at PricewaterhouseCoopers, said:

> *'We have a common interest to improve corporate reporting of tax information. However, we do not believe the introduction of the kind of country-based reporting proposed by this campaign would meet this ambition.'*

It is therefore important to note and respond to the potential counter arguments to country-by-country reporting. The most common are as follows:

a. It will destroy company's competitive advantages and so harm markets;
b. It will be hard to put in place, or to make work properly;
c. Companies do not have or could not calculate the necessary data;
d. Country-by-country reporting will not decrease tax avoidance / evasion because firms will use other devices;
e. Developing countries do not have enough people or qualified people, to look at country-by-country based accounts and therefore will not increase their tax revenues as a result;
f. Even with country-by-country reporting, how to determine the 'right' level of transfer pricing is far from obvious, especially on intangibles, meaning that this will not settle the issue;
g. Consolidated accounts are based on information provided by subsidiary companies but additional entries are made during the consolidation process, so it will not be possible to reconcile country-by-country reporting with the published accounts;
h. Each country already requires that all companies submit their accounts for taxation purposes and so no additional information will be secured by those authorities as a result of country by country reporting but a huge flow of information will be published that will be difficult to interpret;
i. It will be difficult to audit country by country information;
j. In some countries this information is already available, even for subsidiaries located elsewhere;
k. The volume of information required to be disclosed be too great and make financial statements unwieldy;
l. A company could be in breach of its legal obligations by publishing country-by-country reporting data.

No doubt there are other arguments as well, but these appear the most frequently used and we answer each in turn in the following paragraphs.

8.2. Country-by-country reporting will destroy company's competitive advantages and so harm markets

Business efficiency is, as economic theory teaches, dependent upon the availability of high quality information. Unless that information is available then sub-optimal decisions on everything from resource allocation within a company to capital allocation between companies will be inefficient at cost to society as a whole.

The implication of the counter-argument that country-by-country reporting is harmful to business is obvious: it may be harmful to particular businesses. It is not harmful to businesses in general. It is beneficial to have this data for businesses as a whole as this levels the playing field between companies that are more transparent and those that want to be less transparent. If extractive industry companies want to use transparent capital market to finance their business, they should also accept that they themselves will have to be transparent in return. If some companies are not willing to accept country-by-country reporting and move away from these capital markets they

- send a strong signal to their investors that they have something to hide
- actually remove themselves as harmful competitors to companies that accept transparency in order to access transparent capital markets

To accept the argument that country-by-country reporting is harmful to business would require the rejection of the economic theory on which all the logic of markets is based. We presume that is not what is planned.

8.3. Country-by-country reporting is complex

The complexity of country-by-country reporting is not under estimated: it is a real issue. This issue is however solvable by going for existing, standardized information. As a matter of fact all multinational corporations are already reporting on a country-by-country or entity-by-entity basis internally when they are preparing their consolidated group accounts and tax returns. This information is prepared and reported (or should be) within the corporation under the accounting regulations used for the group accounts and individual tax returns, including tax credit information under the home country tax return.

There is in addition to this also a requirement even under International Financial Reporting Standard 8 and it was obligatory under its predecessor, International Accounting Standard 14. As such, companies are already making geographic disclosures in notes to their accounts, and have the ability to do so. The mechanisms to handle the technical issues already exist.

Most countries, such as the USA, have to report profits and tax paid to tax authorities to claim tax credits against home country tax liabilities. The granularity of disclosure required by country-by-country reporting for all countries in which the company operates will thus hardly create significant problems. If it is already possible to identify information for accounting purposes on a selective country basis, then there are absolutely no technical reasons why this cannot be done for all countries (as is currently being done internally in the corporations). A country may in the current accounting system be consolidated up in different chains of companies (through division reporting), but the information exist to easily access this information as long as eliminations are reported as a separate column for all entities in the country-by-country reporting.

8.4. Companies do not have the data to undertake country-by-country reporting

Companies must already have information on their activities in each and every country in which they operate[21]. This is because they either have separate subsidiaries or permanent establishments for each country in which they operate or they have, for taxation or legal purposes. Permanent establishments are self-accounting entities for taxation purposes even if they are not separate legal liability corporations. As such, they have their own books and records and are required to make their own returns of profit and loss to the individual taxation authorities of the countries in which they operate. As a result, companies have the necessary information to make declarations at a country level. In addition, they already have to certify that the accounting and tax information is correct for consolidation purposes and for home country or local country tax purposes, meaning that some degree of auditing or verification will have already taken place with that data.

8.5. Country-by-country reporting will not stop tax avoidance so why do it?

It would be wholly unreasonable to think that a single change in accounting disclosure could stop tax avoidance or tax evasion. It will not. However, transfer pricing abuse is considered one of the most important issues in tax avoidance, both by taxation authorities around the world and by tax advisers and their multinational client companies. It is also of enormous concern to developing countries and those who advise them. Indeed it costs developing countries more in revenue loss than the entire international aid budget[22]. In addition comes all the other instruments being used to transfer pre-tax revenues cross-borders.

It is not suggested that country-by-country reporting is a panacea that will solve all ills. There can be no doubt that some companies will seek to allocate profits in ways that appear plausible and acceptable, but will actually be hiding tax avoidance when doing so. However, we do not abandon laws against murder because human beings do not seem to have stopped killing each other as a result of having them. We keep those laws because they are a deterrent, a mechanism for identifying those who continue to abuse and a means of imposing sanctions when the standards expected by society have not been adhered to. There seems no difference with regard to the creation of a country-by-country reporting standard: just because we know that some people will not comply, or will continue to abuse does not mean that the standard is not in itself desirable, nor does it mean it will not create an effective mechanism for identifying abuse or assisting the imposition of sanction on those who perpetrate it. As a result, the standard remains desirable even if it can never be wholly effective.

It is also incredibly important to note that tax abuse is only one of many issues that country-by-country reporting is expected to address. It also has benefit to those concerned with trade issues, labour issues, corruption, corporate social responsibility and the management of geopolitical risk in an investment context among others. Consequently, to suggest it is not needed because it cannot solve all taxation problems is to argue from a perspective that ignores its other benefits. It is also an argument that only helps those companies that wants to avoid transparency, and thus only helps those companies that keep information out of reach of its investors and loan debtors. It is much more difficult to keep up misuse of power and information when the information

21 It should be noted that some companies dispute this: they say that they organise their internal reporting on the basis of product lines and not on a geographic basis. This may be true, but even if that is their basis of internal commercial reporting they still have to re-sort that data on a country basis for taxation reporting purposes. As such, the claim that they do not have information on a geographic basis appears very difficult to believe, unless they are suggesting they do not comply with the requirement that they report their profit on an appropriate basis to all taxation authorities who have interests in their affairs.

22 See 'Death and Taxes' Christian Aid 2008

is laid out country-by-country instead of being aggregated up in the group financial statements. This is huge improvement in investor's ability to gain insight into, and react to, the use of the funds he puts at the corporations disposal.

8.6. Developing countries do not have the resources to use country-by-country reporting data

The argument that developing countries do not have enough people or enough qualified people to look at country-by-country based accounts thereby implying that country-by-country reporting will not help increase their tax revenues is deeply patronising, probably wrong, and regardless is able to be remedied through the provision of technical assistance and resources that are required by developing countries. Such assistance would allow these countries to create the necessary capacity within their taxation authorities to tackle transfer-pricing abuse. Moreover, as country-by-country reporting will reduce the cost of tackling transfer-pricing abuse, it would actually aid (not hinder) the efforts of tax authorities in developing countries benefit by reducing the scale of the support that they require. As such, this argument does not withstand scrutiny.

Another thing is that as soon as the country-by-country reporting has been done, it is not only developing countries tax authorities that have access to this information, but also the investors in the corporations. Investors and debt providers will have just as much interest in how their funds are being used as the tax authorities in developing countries. Developing countries and their tax authorities are important stakeholders in extractive industry companies, but they are by far alone. There is a wide range of stakeholders, starting with the investors themselves.

The argument is also contra-intuitive, as country-by-country reporting would make it easier, not more difficult, for tax authorities in the developing countries. Those that front this argument are thus less concerned with the developing countries and more concerned with keeping information out of reach from investors and other stakeholders.

8.7. Country-by-country reporting will not stop transfer pricing abuse

This is very much the same argument as the argument that country-by-country reporting will not stop tax avoidance (8.5 above).

Indisputably, country-by-country reporting alone will not completely solve the problem of how to create 'correct' transfer prices. It would be completely unrealistic to expect it to do so. However, it is also important to note that in practice transfer prices are frequently negotiated to achieve a fair apportionment of profit – thus producing a result that in the end is little different from formula unitary apportionment – a fact that is not always acknowledged.

In that case whilst country-by-country reporting does not say what the 'correct' transfer price should be, it does provide some clear indication of whether that objective has been achieved. In so doing, country-by-country reporting will be an incredibly important tool for a variety of groups: whether for the companies themselves, who can use it to defend their position; for tax authorities, who can use it to inexpensively undertake initial audits of transfer pricing; or for investors and civil society, who want to know who do and who do not appear to be abusing the rules.

There is a further return for investors who want to appraise the risk they might face from any particular investment as a result of a company's compliance or non-compliance with regulation. No investor will ever have access to an individual company's transfer pricing information: country-by-country data provides a good proxy measure of likely compliance both in this, and other tax areas. As a proxy measure of tax risk, the reporting data will be invaluable to investors. And yes, there is a true risk that the least noncompliant companies will either have to become more compliant (this is a positive thing) or risk losing investors as these discovers how the companies are (ab)using their funding.

8.8. Country-by-country reporting won't reconcile with underlying data of subsidiary companies in extractive industries host nations

It is true that adjustments are made to the individual subsidiary company accounts when consolidated financial statements are prepared. However, there are two types of adjustments that will be made:

- Eliminations that are done during the consolidation process is of no concern to the country-by-country reporting, as these are intended to be reported aggregated in a separate column in the country-by-country reporting. The eliminations are only reported in order to be able to tie the country-by-country reporting with the accounting numbers in the group financial statements.
- Accounting standard changes as local accounting is converted to the group financial statement accounting standards. This accounting change is, however, assumed to be a matter of interest, and not a matter that should be disguised or go undisclosed. Large differences between local accounting and group accounting can give raise to questions with regards to local accounting standards being used for local accounting and producing the local tax basis.

It is also important to note that since at least 60% of world trade is undertaken on an intra-group basis but not one dollar, pound, yen or euro of this is currently reported in the group consolidated accounts of the world's multinational corporations, there is presently a substantial amount of missing accounting information. This missing information – which will be provided by country-by-country reporting – is important for the management of the world economy. In the process of reconciling individual country-by-country statements with group consolidated accounts, intra-group trade will become visible. Therefore the disclosure of this information would benefit all people by increasing the effective management of worldwide trade. It should be noted that the investors will also become more aware of the risk picture, and the management of each corporation can thus more easily address the risk mitigating actions they are undertaking, and it will be more easily understood by investors.

This reconciliation statement is not considered to be a weakness within country-by-country reporting: it is considered to be one of the more important pieces of information that the reporting would make available.

8.9. Since companies already have to submit tax returns, country-by-country reporting will provide nothing new for tax authorities

Of course, it is true that most countries do already require companies operating within their domain to submit their accounts to the local tax authority. However, there are notable exceptions to this rule. For example, in both Jersey and the Cayman Islands and many other tax havens there is no tax on corporate profits and therefore no company is required to submit a tax return. Moreover, since corporations are not required to report in jurisdictions like Jersey and the Cayman Islands, the governments of those places do not automatically have access to the accounting information of corporations that are located there and neither have the public in these places. Consequently, nobody else is able to obtain that information either. Therefore, if a local company located where corporation tax is payable trades with a related group company located in a place like Jersey or the Cayman Islands, and if the group of companies is not willing to provide the accounts of its subsidiaries in those tax havens, it is nearly impossible for any taxation authority wishing to enquire about transfer prices to secure information about the tax haven side of the transaction.

To therefore argue that country-by-country reporting does not provide additional information to local tax authorities is plainly wrong. Country-by-country reporting may be the only realistic and cost effective way in which they can obtain information on trade with certain locations where accounts do not need to be put on public record.

In the argument there is also an underlying assumption that country-by-country reporting is mainly an instrument to get new information to tax authorities. However, this is only one of the stakeholders interested in financial statement information on a country-by-country basis.

8.10. Country-by-country reporting data would be hard to audit

As a matter of fact, auditors have for many years reported upon country specific data included in the accounts of multinational corporations because this information has been disclosed in the notes to the financial statements under the requirements of International Accounting Standard 14. This standard was always geographically based – a feature that is still partly true of its replacement standard, International Financial Reporting Standard 8. As a result, it cannot be said that country-by-country information cannot be audited.

That said, it is undoubtedly true that country-by-country reporting will tempt some audit companies to make the argument that this will make the audit of some multinational companies more complex and more expensive. It should however then be taken into consideration that the audit company has already examined, under a materiality perspective, the underlying accounting data that forms the basis for the consolidated group accounts and the home country taxation. In this audit examination the conversion from local accounting standards to the universal accounting standards used in the group financial statements, the eliminations being done in order to arrive at the consolidated accounts and the tax credits that forms the basis for avoidance of current year and future year double-taxation has received particular attention from the group auditors. A massive increase in the audit cost of an extractive industry company should thus indicate that the company has been under-audited previously as the country-by-country reporting is only intended to disclose the foundation for the consolidation, and the only item asked from the audit firm is that it confirms that the country-by-country reporting is consistent with the information in the consolidated group accounts. Even the materiality level should be roughly similar as all the amounts that have gone into the consolidation has undergone audit at group level, and the group auditor has usually received comfort statements from subsidiary auditors with respect to the correctness of the numbers from these subsidiaries.

8.11. The data required from country-by-country reporting is already available

It is accepted that some countries require more information to be available about the subsidiaries of multinational corporations registered in their domain than do others. For example, France appears to require that the accounts of subsidiary corporations of French corporations be available for inspection on public record in France; in this respect it is almost alone in the world. Both the UK and USA, in different ways, expect their multinational corporations to place on public record the names and registered locations of the subsidiaries that they own, but neither requires that their accounts be available for inspection. If a company is incorporated in a location such as the Isle of Man – a phenomenon that is becoming increasingly more common with companies registered on the UK's AIM stock market – no such requirement exists. Ireland also has a lax approach regarding the disclosure of information and is becoming an attractive location for the registration of holding companies.

It is precisely because of this variable access to information that a universal standard for disclosure is required. It appears contra-intuitive to argue that just because some countries have better practices than others, those who take advantage of this in order to hide information should benefit as a result. As long as companies are seeking financing through transparent markets, they should in return apply obligatory transparency requirements, something that country-by-country reporting actually achieves, levelling the competition between companies irrespective of where they are domiciled.

8.12. Country-by-country reporting data would be too bulky to publish

It is true that country-by-country information could be of significant volume, but not overly so (one double-page in landscape format should cover 3-8 countries depending on the formatting). However, this is no reason to not publish it.

First of all, many corporations already send summarised financial statements to a majority of their private shareholders. These summary statements would not be required to include country-by-country data; instead country-by-country reporting could be available electronically as part of their full financial statements.

Second, the accounts of almost all multinational companies are now available online, and this is undoubtedly the most common way in which stakeholders access this information. Paper need not be printed as a result.

Third, because of the recognition of this general fact, new standards for the provision of corporate accounting data online are being created and should be in operation within a year or two. The data will then be available to a universal standard that will allow it to be downloaded and used in spreadsheets and other programs.

Put simply, the accounting profession has recognised that the complexity of global companies requires substantial information to be published. Some accounts are already 400 pages long. This is necessary to provide users with all of the data that they require to assess information and interrogate it as they wish. If anything, this volume of data provides additional incentive for the provision of country-by-country reporting, and not the opposite, as country-by-country reporting cuts a path through the complexity to provide local data to those for whom this data is a concern. It is also a fact that country-by-country reporting could replace some of the existing reporting as geographical distribution of (aggregated) revenue data would become obsolete, as would potentially other types of geographical segment reporting. As country-by-country reporting would be standardized across accounting standards, this would actually save significant costs on the analytical side.

8.13. A company could be in breach of its legal obligations by publishing country-by-country reporting data

It has been suggested a company might be in breach of its legal obligations in a host country within the extractive industries if it were to publish accounting information with regard to that jurisdiction when the PSA/PSC or MDA of that jurisdiction required confidentiality for information relating to the contract.

This argument is not accepted for three reasons:

- Firstly, it will not be the local company that is publishing this information. It is the parent company that will be required to publish this information, and that parent company will, by definition, be in another jurisdiction. A contract agreed in one location cannot restrict the right for the disclosure of accounting data to be specified in another jurisdiction. To this comes the fact that all extractive industry companies that have entered into agreements with local government ALWAYS have a clause in the agreement that states that it is not a breach of confidentiality if there is a requirement in law in the home country to disclose such information.
- Secondly, as has been argued by academic legal research promoted by Publish What You Pay in the USA, such confidentiality clauses cannot be enforced outside the jurisdiction to which they relate, and cannot apply to parent companies of subsidiaries in those locations, particularly when the information disclosed will be on a consolidated country basis.
- Thirdly, to acquiesce to this would make country by country reporting voluntary, meaning that the most egregious states, which are those most likely to enforce secrecy most rigorously and which are consequently those where there is most likely to be a need for information to curtail abuse will be those most likely to be exempt from disclosure. This makes no sense at all, and must be firmly resisted, since the legal basis for doing so clearly exists. Reference is also made to the first point in this regard. An extractive industry company has a very poor agreement if it has not already included clauses under which it can disclose information in the home country as long as it is bound by law.

ATTACHMENT 1: THE REGULATION NEEDED TO CREATE COUNTRY-BY-COUNTRY REPORTING

It is suggested that the regulations required to create country-by-country reporting in Norway in particular and EU and other countries in general would be as follows:

1. These regulations (to be known as the Country-by-Country Reporting Regulations, 2011) shall require that any company based in Norway ('the parent company'), or that is financing itself through the capital markets in Norway, that itself or through any subsidiary, associated company or joint venture ('the group') are engaged in the extraction of oil, gas or mineral products, or the management thereof anywhere in the world shall make the disclosures noted herein in the parent company's annual audited consolidated financial statements that it is required to present annually to its members for approval at its annual general meeting;
2. The required disclosures shall apply to the activities of all the group entities to the full extent that the results of each such entity are reflected in those consolidated financial statements, but no more;
3. The disclosures to be made by the parent company shall be as follows, with such disclosure to be required only in its audited financial statement published and made available electronically:
   - 3.1 The name of each country in which the group operates. A country shall for these purposes be defined as any jurisdiction in which the group or any member thereof has a permanent establishment as defined by the Organisation for Economic Cooperation and Development for taxation and legal purposes;
   - 3.2 The names of all its group entities trading in each country as defined in section 3.1 in which it operates;
   - 3.3 The groups financial consolidated profit and loss account in every country in which it operates, subject to the exceptions noted in sections X and Y below, such consolidated profit and loss account to state:
     - 3.3.5 Sales, both third party and with other group companies;
     - 3.3.6 Separate accounting, distinct from the turnover category, for all futures, hedging, derivative and forward contract sales with separate disclosure of purchases of similar financial instruments being disclosed with netting off not allowed;
     - 3.3.7 Purchases, split between third parties and intra-group transactions;
     - 3.3.8 Labour costs and employee numbers;
     - 3.3.9 Financing costs split between those paid to third parties and to other group members;
     - 3.3.10 Its pre-tax profit;
     - 3.3.11 The tax charge included in its accounts for the country in question and additional tax information split as follows:
       - 3.3.11.1 The tax charge for the year split between current and deferred tax;

3.3.11.2 The actual tax payments made to the government of the country in the period;

3.3.11.3 The liabilities (and assets, if relevant) owing for tax and equivalent charges at the beginning and end of each accounting period;

3.3.11.4 Deferred taxation liabilities for the country at the start and close of each accounting period.

3.3.12 Details of the cost and net book value of its physical fixed assets located in each country including the cost of all investments (including those relating to exploration) made in assets related to extractive industries activity by location and the proceeds of sale from disposals of such assets by location;

3.3.13 Details of gross and net assets in total for each country in which the entity operates.

3.3.14 Accounting provisions made by location for the payment of the following (each being separately categorised):

3.3.14.1 Signature fees and bonus payments due on signing an MDA;

3.3.14.2 Annual rentals and other similar obligations;

3.3.14.3 Royalties;

3.3.14.4 Import duties;

3.3.14.5 Export duties;

3.3.14.6 Sales taxes;

3.3.14.7 Taxes due arising as a result of employment of staff;

3.3.14.8 Taxes due on dividends;

3.3.14.9 Withholding taxes;

3.3.14.10 Local government taxes

3.3.14.11 Other taxes due.

With in each case it being stated if the sum is to be settled in kind;

3.3.15 The total sum actually paid in respect of

- Intra-group fees and services (not goods);
- Corporate taxes;
- Total payments to host governments including corporate taxes, but excluding payments of employee taxes;
- Dividend payments

in the current year and cumulative since the current operation commenced.

3.3.16 Estimated reserves data originally in place, current year production and cumulative production from the time the current operation commenced, by product.

4. The audit statement of the consolidated group financial statements shall verify that the data disclosed in respect of each jurisdiction referred to in paragraph 3.1 are in line with data audited in conjunction with the audit of the aggregated consolidated group financial statements.

5. If the following conditions exist with regard to a jurisdiction referred to in paragraph 3

5.1 Turnover plus hedging derivative and financial income (as per accounts pro-forma noted below) in the jurisdiction exceeds US$1 million but is less than US$5 million in the reporting period;

5.2 The net value of tangible fixed assets in the jurisdiction increases by more than US$1 million but by less than US$ 5 million in the reporting period;

5.3 Turnover plus financial income in the jurisdiction was less than 5% of the total consolidated turnover plus financial income of the reporting entity during the reporting period;

5.4 The jurisdiction is not one in which upstream extractive industries activity occurs;

then the matters referred to in the following paragraphs below need not be disclosed:

3.3.7
3.3.8
3.3.9
3.3.12
3.3.13
3.3.14 and consequent paragraphs
3.3.18

6. If the following conditions apply:

6.1 Turnover plus hedging, derivative and financial income (as per pro-forma noted below) in the jurisdiction exceeds US$1 million in a reporting period;

6.2 The net value of tangible fixed assets in the jurisdiction increases by more than US$ 1 million in a reporting period;

6.3 The situations noted in part (3) section (3) above have not arisen;

then separate disclosure of the data referred to in paragraph 3 above need not be made and the relevant data for the jurisdiction shall be consolidated with that for other jurisdictions to which this paragraph applies to be reported as a single set of combined data.

7. Eliminations between the country-by-country data and the consolidated group financial statement numbers shall be reported as a single set of combined data.

   The auditor must expressedly state if not all data referred to in these regulations, excluding those in paragraph 6, forms part of the group auditors audit of the unconsolidated basis for the aggregated and consolidated group financial statements.

ATTACHMENT 3: ARGUMENTS FOR COUNTRY-BY-COUNTRY REPORTING

A3.1. The reasons behind country-by-country requirements

Country-by-country reporting would require disclosure of the following information by each extractive industry company in its annual financial statements:

General disclosures pertaining to the financial statements

1. The name of each country in which it operates, a country for these purposes being defined as any jurisdiction in which it has a permanent establishment for tax or legal purposes
   - It is important for investors and other stakeholders to know which countries a company is operating in, and with respect to the rest of the information required under the country-by-country reporting it is important that the details of its operations are reported in a standardized way in order to secure that less transparent companies have to report to the same level as more transparent companies. If this is not done, then companies will use the materiality argument to keep certain information aggregated and not reported country-by-country. Since materiality will differ from company to company, this would destroy many of the benefits of country-by-country reporting. Current reporting only includes material countries and is thus not adequate under the country-by-country requirement.
   - A country-by-country reporting will require that a corporation discloses ALL its operations.
   - This information is available through the group consolidation process.
   - Information need met
     - Discloses geographic spread of the multinational corporation
     - Advises investors and host communities of the presence of the multinational corporation in a jurisdiction
   - Indicates presence in locations likely to be subject to geo-political risk
   - Indicates exposure to local regulatory and tax regimes.

2. The trade names of all its companies trading in each country in which it operates
   - Sometimes a trade name is different from the name under which a subsidiary is incorporated. By requiring that a company under each country that it has operations also lists the trade names it operates under in that country, key stakeholders are given the information needed to assess the total operation and trading going on in the country in question.
   - A trade name is not a secret, but different trading names for the same corporation sometimes conceals the true extent of an involvement by affiliated companies in a country. This country-by-country requirement will give important information internally in each company as companies within a large multinational corporation are sometimes unaware of the trading of affiliated companies.

- This information is available through the group consolidation process as all internal and external transactions are aggregated up to the geographical sales information in the notes to the group financial statements.
- Information need met
  - Identifies completely and accurately the full group structure of a multinational corporation, a feat rarely possible at present
  - Lets a multinational corporation be properly identified in the market place and in the host communities that facilitate its activities
  - Allows those engaging with a multinational corporation globally or locally to identify ultimate responsibility for the entity with which they are trading
  - Ends the corporate culture of secrecy about activities in many jurisdictions, whether they are secrecy jurisdictions or not
  - Means a multinational corporation is accountable for all its actions – a pre-condition for corporate social responsibility.

Disclosures related to the Profit & loss statement

3. What its financial performance is in every country in which it operates, without exception, including:
   - Its sales, both third party and with other group companies, including volumes
     - Sales information, including the volumes sold, are some of the most important information in the country-by-country reporting. The reason for this is that key stakeholders are seeking information about the size of a corporation's activity.
     - Revenue by product is an important element in understanding the total extractive operation going on in the country
     - Volume by product is an important element in understanding the underlying size of the operations without the influence of commodity price changes on world markets
   - Its hedging transactions and other uses of derivative instruments, both third party and with other group companies, including volumes (separate accounting, distinct from the turnover category, for all futures, derivative and forward contract sales with separate disclosure of purchases of similar financial instruments being disclosed with netting off not allowed);
     - Hedging and other derivatives, including volumes involved, are at the same level as sales information with regards to importance in the country-by-country reporting. The reason is that key stakeholders like investors needs information about how these instruments are being used within the corporation.
   - Purchases, split between third parties and intra-group transactions;
   - Labour costs and employee numbers;
   - Financing costs split between those paid to third parties and to other group members;
   - Its pre-tax profit;
   - The tax charge included in its accounts for the country in question split as noted in more detail below;
   - Information need met disclosing revenue information
     - The extent and direction of sales flows by multinational corporations will be documented
     - The full extent of intra-group sales will be understood for the first time
     - The use of tax havens / secrecy jurisdictions as locations for the routing of intra-group transactions will be properly understood

  - The relocation of sales for tax purposes will be identifiable
  - Tax haven / secrecy jurisdiction locations are frequently used to relocate risk within multinational corporations using financial instruments of these sorts. Disclosure of all derivatives undertaken within groups and externally will show the extent to which profits are relocated using financial instruments.
  - The risk inherent in internal supply chains will become apparent
- Information need met by disclosing purchase cost information
  - This data is requested to complement that on sales: when the sales of a multinational corporation from a jurisdiction are largely matched by intra-group purchases it is likely the jurisdiction is being used for re-invoicing purposes and transfer mispricing may be taking place: a cause of concern to almost all tax authorities
  - The extent of outsourcing in source jurisdictions likely to be at the start of supply chains can be identified, especially when compared to labour data (see below)
  - The vulnerability of supply chains can be identified
  - By comparing intra-group purchases and intra-group sales likely intra-group supply chains can be established
  - Sourcing from locations with high geo-political risk should be identifiable
- Information need met by disclosing labour cost information
  - The organisation of labour by jurisdiction within multinational corporations can be identified
  - Unusual incidence of value added in proportion to labour cost can be identified
  - The likelihood of outsourcing can be identified
  - Average reward per employee by jurisdiction can be calculated
  - Trends in labour relationships over time can be monitored
- Information need met by disclosing financing cost information
  - Financial flows indicate where financial assets and liabilities are located within and beyond multinational corporations: disclosure of income and payments, especially on an intra-group basis will indicate the extent to which profits are relocated through the use of debt that creates internal and external financial risk within the multinational corporation
- Information need met by disclosing the pre-tax profit
  - Pre-tax profit is, without exception, the principle starting point for determining:
    - The location of retained reserves
    - The ability to finance activity without recourse to third parties
    - The likelihood of ongoing financial stability of the entity
    - The potential for making payment of taxation liability on income arising
    - Each of these is of serious concern to the extractive industries, especially in the light of the considerable environmental risks it often exposes a country to.
  - Pre-tax profits located in many countries where there is considerable corporate secrecy are currently impossible to ascertain
  - The presence of significant profit in locations where most purchases and / or sales are intra-group might indicate artificial relocation of profits
  - In the absence of profits in locations where it would be expected there could be considerable value added e.g. in source locations for extractive industry supply chains, might indicate transfer pricing concerns are appropriate
  - Persistent losses in a jurisdiction might indicate the misallocation of resources by a multinational corporation, as could strongly differing profit

rates between jurisdictions
  - Significant profits arising in politically sensitive jurisdictions might indicate vulnerable future earnings
  - Significant earnings in tax havens / secrecy jurisdictions might indicate high tax risk or unsustainably low tax charges indicating a likely change in future after tax earnings ratios
  - Significant profits arising outside a parent company location where corporate taxation is assessed on a remittance basis might indicate limited access to funds for dividend distribution purposes

Disclosures related to the Balance sheet

4. Details of the cost and net book value of its physical fixed assets located in each country including the cost of all investments (including those relating to exploration) made in assets related to extractive industries activity by location and the proceeds of sale from disposals of such assets by location;
   - Treatment of investments differ significantly between countries, and this information would give investors and regulators insight into how their funds were being managed around the world, and together with information on dividends and taxes would give information as to why dividends are not paid upwards in the corporate structure and ultimately to the investors.

5. Details of gross and net assets in total for each country in which the entity operates.
   - Information need met
     - Without indication of the capital dedicated by a multinational corporation to a jurisdiction it is not possible to calculate:
       - Rate of return on capital employed in the jurisdiction and to compare these
       - To determine whether capital invested justifies the level of profit reported
       - To determine whether capital assets are being appropriately allocated to support labour productivity, or not
       - To determine where assets and liabilities are likely to be within a group and whether they are as a consequence available a) to shareholders and b) to creditors

Disclosures related to the tax charges and tax payments in particular

Tax information would need to be analyzed by country in more depth requiring disclosure of the following for each country in which the corporation operates:

6. The tax charge for the year split between current and deferred tax (profit & loss);
   - Information need met with regard to taxes payable
     - The extent to which a tax charge is expected to arise when compared to headline tax rates indicates the effectiveness of a tax regime in capturing income for tax assessment purposes
     - The degree to which corporate tax liabilities can be deferred indicates the existence of incentive allowances out of alignment with economic costs incurred, and indicates future potential reversal and erratic cash flows
     - The ratio of tax paid to profitability across jurisdictions is at present unknown: country-by-country reporting would provide it and indicate the extent and nature of cross border tax planning and international tax arbitrage

    - If a declared tax rate appears aberrant it may indicate unsustainability
- Information need met with regard to deferred taxes
    - Deferred taxation indicates any of these things:
        - Possible excessive allowances offered by the jurisdiction that creates problems with tax credits and the ability to dividend to home country
        - The existence of significant tax avoidance
        - A non-alignment of taxation with underlying economic reality

7. The tax liability at the end of the year split between current and deferred tax (balance sheet);
    - Information need met
        - This data is required to undertake an overall tax reconciliation for a jurisdiction: tax due at the end of the prior period plus the current tax charge for the period less tax paid current year should equal the closing liability at the end of the current period. If it does not there is indication of irregularity in accounting or in cash taxes paid.
        - The failure of a jurisdiction to collect tax owing to it is indicated by this data: if tax outstanding relates to more than one year prime facie there is a tax collection problem within the jurisdiction or the entity is declaring liabilities in its accounts that are inconsistent with those declared to tax liability.

8. The actual tax payments made to the government of the country in the current period and cumulatively (cash flow);
    - Information need met
        - It is not accruals made for tax that allows governments to meet their obligations – it is cash in its bank accounts that allows it to do that: cash paid is the ultimate proof of tax settled. This data is currently entirely unavailable and as such, the contribution of multinational corporations to individual national economies is very hard to assess
        - It is cash that is the subject to corruption: it is cash for which governments have to be held to account. This data is vital for that purpose
        - Cash settlements of less than liabilities declared in earlier years suggest the presence of undetected tax planning or corruption. In either case the effectiveness of the tax regime of the jurisdiction is in question.

In addition, for companies within the upstream extractive industries the following would also be required to disclose for those locations where upstream activity occurs:

9. Accounting provisions made by location for the payment of the following (each being separately categorised) (specification of profit & loss):
    - Signature fees and bonus payments due on signing an MDA;
    - Annual rentals and other similar obligations;
    - Royalties;
    - Import duties;
    - Export duties;
    - Sales taxes;
    - Taxes due arising as a result of employment of staff;
    - Taxes due on dividends;
    - Withholding taxes;

- Local government taxes
- Other taxes due.

- Information need met disclosing detailed tax information
  - Provisions data prepared on an accruals basis is essential so that this information can be consistently compared with other data similarly prepared on an accruals basis within the financial statements
  - The information in question provides enormously powerful data that indicates whether the assets of the extractive industries within a jurisdiction are well managed or not. So, for example:
  - The provision for royalties when compared with sales data will indicate the rate of royalties due and whether these are consistent over time;
  - Signature bonus rates will indicate whether concessions are being granted in exchange for suitable fees;
  - Rents receivable also indicate whether good deals have been done;
  - The presence of payments for import and export duties indicates whether the extractive industries are subject to the same taxes as other industries.
  - Taxes due on employment compared to employee costs indicate whether appropriate taxes are being paid when compared to published rates.
  - The rate of tax withholding indicates whether or not the country allows profits to be extracted with or without a tax charge. Since withholdings are often due on payments that artificially reduce profits that might be subject to tax such as interest paid and royalties for the use of known how or technology withholding taxes can be an important mechanisms for protecting the tax base of a country.
  - The rate of corporation tax due on profit indicates whether standard or non-standard tax rates apply and whether or not.
  - Knowing whether tax charges are deferred or not indicates whether a country is likely to see immediate benefit or not of the tax charges arising on profits. In far too many cases tax liabilities are deferred for considerable periods denying local populations the benefit of taxes that appear to be due.
  - Comparing the above data with opening and closing tax liabilities and the cash flow statement allows checks to be undertaken to ensure that declared liabilities are not lost in transit to the government when the time comes for payment – which is an important anti-corruption measure.

If the sum due was to be settled in kind and not cash this should be specified;

10. The total sum actually paid in respect of the taxes specified in paragraph 4.1.10. during the course of each year;

- Information need met
  - It is not accruals made for tax that allows governments to meet their obligations – it is cash in its bank accounts that allows it to do that: cash paid is the ultimate proof of tax settled. This data is currently entirely unavailable and as such, the contribution of multinational corporations to individual national economies is very hard to assess
  - It is cash that is the subject to corruption: it is cash for which governments have to be held to account. This data is vital for that purpose
  - Cash settlements of less than liabilities declared in earlier years suggest the presence of undetected tax planning or corruption. In either case the effectiveness of the tax regime of the jurisdiction is in question.

Disclosures related to vital cashflows

11. Current year and cumulative disclosure country-by-country of:
    - Intra-group fees, services and overhead that are covered by the company in the host country based on recurring lump sums, i.e. excluding hourly based services and physical goods, from the time that the country-by-country reporting commenced.
    - Corporate taxes paid in the current year and cumulatively from the time that the country-by-country reporting commenced.
    - Total payments to host governments paid in the current year and cumulatively from the time that the country-by-country reporting commenced, except for employee taxes.
    - Dividends paid in the current year and cumulatively from the time that the country-by-country reporting commenced.

    The company can elect to present cumulative numbers since the current operations started and not from the time country-by-country reporting started as long as this principle is consistently applied to all four cash flows.

    Cumulative numbers are reduced when activities are sold out of the group based pro-rata on cumulative production in the entity. Cumulative numbers are not reduced when activities are sold to affiliated companies.

    - Information need met by disclosing these cash flows:
        - It is not accruals made that are evidence of activity: cash paid is the ultimate proof of settled liabilities. This data is currently entirely unavailable.
        - It is cash that is the subject to corruption and manipulation: it is cash for which companies and governments have to be held to account. This data is vital for that purpose.
        - Lump sum payments to affiliated companies without specified services and goods, corporate and total taxes as well as dividends are three vital cashflows from the company in the host country.
        - Specifically on tax settlements: cash settlements of less than tax liabilities declared in earlier years suggest the presence of changes between accruals and cash flows. This is an indication of settlements with the tax authorities, effects of tax planning or corruption. In either case the effectiveness of the tax regime and/ or the tax administration of the jurisdiction is in question.

12. Estimated pre-production reserves data, current year production and cumulative production since the time the current operations commenced. Pre-production reserves will be increased when new reserves are booked by the company. Pre-production reserves and cumulative production will be reduced with pre-production reserves and cumulative production when a field or a mining operation is decommissioned and abandoned.
    - Information need met
        - Information vital to appraisal of the success or otherwise of the DA that the multinational corporation is managing.
        - Essential for calculating average sales prices to assess whether they are in line with market expectations;
        - Vital for disclosing the potential future revenues of the extractive industries for the host jurisdiction.

A3.2. The benefits of country-by-country reporting

A3.2.1. The advantages of this disclosure for the investor

This disclosure provides the following additional or easier to access information for investors in any multinational corporation (MNC):

a) A comprehensive disclosure of the locations in which the corporation trades.

In principle this is already available to investors in EU located MNCs as a result of requirements in the Fourth and Seventh European Directives on accounting. In practice, as research has shown, disclosure of this information is almost always relegated to secondary documentation when that is possible (as it is, for example, in the United Kingdom) and that disclosure in secondary documentation is noticeably absent 23. A 2009 study for the Tax Justice Network showed that of the 100 largest companies in the UK just 33 filed the information required by UK company law stating the names of each of their subsidiaries and the country in which they were located. This deficiency would be overcome if the information were to be included in the audited financial statements of the reporting entity because no auditor would then allow that omission.

If this disclosure were required investors would be empowered to form opinion on the following issues which in many cases is currently denied to them:

a. Whether they wish to invest in corporations with assets in locations they do not wish to associate with. This is of particular importance to ethical investors.
b. To what extent, if any, the MNC is dependent upon the use of subsidiary companies in tax haven locations.
c. The degree of exposure to geopolitical risk that the company is likely to face, simply by presence in certain locations.
d. The degree of reputational risk that the company might face as a consequence of its decision to trade in certain locations.
e. Trends in the geographic spread of the company's activities over time, indicating diversity, or absence thereof.

b) The trading names that the company uses.

Whilst there are, of course, occasions when an MNC trades almost entirely under its own name, this is relatively rare. Many corporations that will be subject to country-by-country reporting are conglomerates by nature and it is hard for an investor to identify accurately the trade it undertakes by location and by name. Given that ultimately all investors are real people who are located in a place it is vital that they can identify the MNC in which they might invest with the local economic activity it undertakes in their home jurisdiction if they are to undertake proper investment appraisal of its activities in the location with which they are familiar. Evidence suggests that this is surprisingly hard in some cases with some MNCs.

c) The publication of a profit and loss account for each jurisdiction (excluding those considered wholly immaterial as noted above) in which an MNC trades

This data, including data on sales and purchases undertaken on an intra-group basis, will allow an investor to appraise the following:

a. The geographic diversity of the external sales of the company;
b. The risk that this diversity creates for the company;
c. The risk that the internal sales supply chains create for the company;
d. The approximate directions of flow of goods and services through the group as a result of intragroup trading;
e. The profit earned by a group in each location as a proportion of third-party and intragroup sales, both indicating in turn the risk of a transfer pricing challenge arising, particularly if the group is making significant use of tax havens or if the ratios of profit to sales are high in low tax jurisdictions and low in high tax jurisdictions;
f. The locations in which an MNC employs its labour, the degree of risk that this might give rise to, and any issues or stresses likely to arise as a result of significant variations in average pay by location, particularly when compared to other similar undertakings;
g. The flow of finance charges within the group, and the particular impact that these might have on an intra-group basis with regard to the re-allocation of profits between jurisdictions, giving rise to risk of transfer pricing or thin capitalisation challenge from taxation authorities, prejudicing the potential quality of future earnings;
h. The rate of return on capital employed by jurisdiction, suggesting whether or not assets are efficiently allocated by group management to the locations in which the MNC trades;
i. The constitution of the tax charge by location, so that the impact of taxation allowances and reliefs on the current taxation charge, as indicated by the amount of charge deferred, can be assessed by location, giving indication of the potential for reversal of such benefit in future periods, meaning that the impact of such reversal on future cash flow can be assessed;
j. Consistent, comparative data between companies allows this analysis to be replicated between MNCs, adding to the basis for assessment of activity by location and the effectiveness of the management of each corporation in allocating resources.

d) Limited balance sheet data by jurisdiction

This data is essential if investors are to appraise:

a. The rate of return on capital by jurisdiction;
b. The allocation of resources by the reporting entity;
c. The exposure to risk of capital loss by jurisdiction, particularly in politically vulnerable situations;
d. The contribution that deferred tax makes to financing by jurisdiction;
e. Policy with regard to the retention of earnings by jurisdiction, giving indication on taxation management and planning and any resulting vulnerabilities and their impact on allocation of resources, particularly when dividends are taxed in the parent location on receipt;
f. The vulnerability of dividend policy to the retention of reserves in low tax jurisdictions.

e) Sales data

Sales data from and to jurisdictions has always been of significance when appraising the geographic spread of markets, and the ways in which a corporation services them. It is highly likely that this type of analysis, which has long been included in segment reporting when undertaken on a geographic basis, will continue to be of interest to investors. To ensure the supply of this data within country-by-country reporting, disclosure must be made of the destinations of third party sales made by the reporting entity excluding those locations where such sales are less than US$5 million or 5% of third party turnover declared in the financial statements, if lower.

f) Data on payments made by companies in the extractive industries

Data on payments made by multinational corporations to the governments that host their upstream activities are of considerable importance to investors, because the proper governance of such payments and the elimination of illicit flows arising from them is critical to the maintenance of low risk, long-term, stable earnings from these jurisdictions, whose own well-being is dependent upon receipt of such funds in a controlled, accountable and managed fashion. The more an MNC engaged in this sector cooperates with those seeking to eliminate corruption and abuse associated with the 'resource curse' that has long plagued this industry, the more likely it is to enjoy long-term stable earnings from the extractive industries in the current world political environment. As such this data is vital to the proper appraisal of the degree of cooperation the company is offering in the elimination of illicit financial flows while assessing the contribution made to the countries who host its activities. This is fundamental to the maintenance of the critical long-term relationships that underpin success in this sector.

For all the reasons noted, country-by-country disclosure is vital to investors who wish to properly appraise the activities of the MNCs to which they loan funds or in which they hold equity stakes.

In summary, it is suggested that country-by-country reporting data will supply the following benefits to investors in multinational corporations:

a. Increased profitability because less time will be put into tax management and more
b. into making profit;
c. Reduced risk;
d. Greater confidence in the governance of the enterprise;
e. Enhanced ability to predict future earnings;
f. Better valuation of the company;
g. Greater stability of earnings.

A3.2.2. The benefit of country-by-country reporting to other users of financial statements

Some of the benefits of country-by-country reporting for those with an interest in the financial statements of a multinational corporation but who are not investors in it are:

a) For management of the company

a. Better management of data within the organisation

b. Increased accountability within the organisation
c. Enhanced governance as a consequence
d. Better data for decision making and resource allocation purposes
e. Better risk management data.

b) For stakeholders

a. Improved data on what the company does, where it does it, and who it does it with
b. The ability to hold the company to account
c. The chance to decide that this is an organisation civil society wants to applaud
d. Better data on trade for those concerned with trade, environmental, resource and human justice

c) For employees

a. Better data in advance of working for a company
b. Better data to assist employment negotiations with a company
c. Comparable data to assess whether a company is consistent in its dealings with its employees
d. Data to prevent abuse

d) Suppliers and customers

a. Reduced risk from trading with a multinational corporation because local data on its operations will be available

e) Tax authorities

a. Better data to determine whether multinational corporations are tax compliant where tax compliance means seeking to pay the right amount of tax (but no more) in the appropriate place at the appropriate time. Appropriate means that the economic substance of the transaction undertaken coincides with the place and form in which it is reported for taxation purposes.

f) Other regulators and agencies

a. Data to assess who does what and where – data which is currently almost impossible to obtain. The consequence of this being better and more focussed regulation produced at a lower cost.

ATTACHMENT 4: THE CASE FOR COUNTRY-BY-COUNTRY REPORTING

Injustices towards people who are seeking the truth about extractive industry companies are quite common. Here we will highlight a case that involves many of the traditional conflict areas; government officials, extractive industry companies, civil society and money transfers.

Country-by-country reporting implemented in Norway, EU, the US and other places may give investors in extractive industry companies and others outside these jurisdictions more leverage to demand the same type of reporting requirement over time. Another matter is for example that regulating authorities in countries that have enacted country-by-country reporting (for example EU and the US) may demand as part of concessions in connection with company acquisitions that companies that are domiciled in jurisdictions which do not have country-by-country reporting must comply with country-by-country reporting in order to be allowed to take over companies in a country with transparent markets and transparent information. This way it becomes less possible to keep up unfair competition cross borders globally.

ARGUMENTATION CATALOGUE BY PWYP NORWAY

Almost all companies refer to that they 'fully support the EITI and efforts for increased transparency, and that 'transparency is a cornerstone of good governance and a productive business environment.'

Also, some institutions operating closely with this sector are also present arguments along the same lines as the companies. The purpose of many of these institutions is good, but we believe that there are some misunderstandings and some inadequacies in the argumentation, which may results in confusion for among policy makers. Many of those presenting such arguments does not seem to have operational experience or knowledge from global tax planning in the extractive industries, which may lead so some inconsistent conclusions.

We would like to clarify this for policy makers and investors as well as other constituencies.

The counterarguments are many. They do tend to be run along a few familiar lines, though.

PWYP Norway has tried to collect some of the most usual counter arguments that we have heard. There are many nuances of the 'counterarguments', but they do tend to run along a few familiar lines. Here we will present our 'counterarguments to the counterarguments'.

1. 'Sensitivity of information/Competitiveness'
2. 'Availability of information'
3. 'Cost/benefit analysis'
4. 'Legal issues'
5. 'Definition issues'
6. 'The Chinese threat'
7. 'Exemptions'
8. 'Priority issues'
9. 'Format of reporting'
10. 'Governance/Political issues'

If you have any other counter arguments that you do not feel that we have covered, or sufficiently covered, or any other comment or suggestion on this matter, please let us know: **post@pwyp.no**

We will update this 'Argument catalogue' on our webpage **www.pwyp.no**

We have also been asked what is the definition of an extended country by country reporting standard, as proposed by PWYP Norway. We would say that ' An extended country by country reporting is the reporting on revenues, costs, profits, taxes and production in the company's financial accounts for all countries in the company's consolidated accounts.'

Counter arguments	Our response
'Sensitivity of information'	
This is sensitive information, we may loose contracts.	Statoil was one of the first major oil companies to start disclosing all revenues and payments in several countries of operation and voluntarily done so since 2005. There is no indication that this company has lost contracts. To the contrary, Statoil seems to be viewed favorably by many governments around the world.
Information can be abused and cause reputational harm.	It is less chance that information is abused if it is on the table and available to everybody. It is information asymmetry that usually can lead to information abuse.
Would cause a competitive disadvantage.	As long as all extractive companies that accesses equity or debt markets are liable to give CBC data, there will be no competitive disadvantage. On the contrary, this data will be viewed positively by governments and population alike.
Useful to have EU rules only if it takes account of principles of: • confidentiality (to ensure respect of current obligations under legal requirements, contractual agreements and confidential info), • universality (CBC provided by all sectors and all EU companies even if not listed, but possible exclusion of SME), • comparability (of data provided by different companies) and • (reasonable judgment of) materiality (for the disclosure at country level and on payment type).	• Data collection based on common categories and easily accessible data.
'Cost/Benefit analysis'	
There will be a large increase in costs and it will be a challenge to get rules that are the same for all. A large competitive distortion will be negative both for companies and investors.	The largest competitive distortion is taking place today when some companies are giving up a lot of information while other companies are avoiding reporting. A CBC reporting over a certain minimum will enhance the competitive situation for those companies that are already transparent in their reporting, and the reporting proposed by PWYP Norway makes it possible to see revenues, costs, taxes and production in relation. As the company sits on this information on the level of the mother company, it will be linked with low costs to report it. To the degree that a company has so bad internal control systems and a low quality accounting that they lack this information on the level of the mother company, then investors should be very interested in seeing the CBC.
It is too costly to gather this information.	The i nformation has already been gathered for the purposes of correct consolidation of group accounts and correct handling of tax credits in the various tax jurisdictions (to the extent that there really should be some slight cost to gather any further information: What has been the cost for poor people in developing countries being looted over generations?).
Compliance burden.	It is actually easier to comply with the CBC reporting requirements suggested by PWYP Norway than it would be to aggregate information into various geographical and organizational areas. The reason for this is that all consolidated information starts at either (1) the entity level inside a country or (2) the country level (sub-groups).
Beyond scope of financial reporting.	No, CBC reporting is not beyond the scope of financial reporting. It IS financial reporting. Investors and other constituents would find huge information improvement through financial reporting of revenues, costs and taxes at the country level.

May result in overly complicated initiative, whose costs may exceed its benefit.	This is not an initiative to get NEW information; it is an initiative to have the companies report the financial information they have given in the group accounts broken down to a country level. It is neither complicated nor costly.
Undue costs to smaller entities.	No, smaller entities would not have any more costs with this reporting than larger entities. All group companies has to have some form of reporting of revenues, costs and taxes in order to be able to consolidate their accounts across the company structure.
All figures will need to be accounted again, huge costs.	No, all figures have already been accounted for in the reporting packages, and it is essentially only a matter of disclosing them at a country level.
We will have to implement new accounting procedures and new accounting systems in order to comply with this requirement.	No, the accounting procedures has already taken into account the requirement to have reporting packages that report each entity/country for consolidation purposes, and no new accounting systems are needed over and above those that already exist for consolidation purposes.
Will give increasing competition costs for companies by revealing proprietary information.	Since all companies that want to access equity or debt markets would be liable for CBC reporting, no company would reveal more proprietary information than its competitors.
Concerns with the requirement in the Proposed Rule to prepare resource extraction payment disclosures on the cash-basis of accounting. Because registrants' existing reporting processes and accounting systems are based on the accrual method of accounting (and require certain payments to be capitalized), the Proposed Rule will require registrants' accounting groups to develop new information systems, processes, and controls. This burden comes at a time when registrants are already engaged in implementing numerous, large scale accounting standards.	A group needs to have insight into its tax payments both based on an accrual basis and based on a cash basis. The reason for this is that taxes on an accrual basis is necessary for the consolidated accounts, while taxes on a cash basis is necessary for the handling of tax credits in the mother company's (or any sub-holding company's) tax return.
No benefit for investors because of commercial, contractual and legal issues as well as significant costs due to CBC	This is plainly wrong. First, investors will have significant benefit, potentially the largest benefit of all constituents, of CBC reporting. Secondly, the costs associated with CBC reporting are greatly overestimated as this information are available at mother company level already.
'Availability of information'	
We do not have this information.	This is information that all companies will need to have in order to consolidate account in the mother company and handle tax credits in their mother company tax return.
Getting access to this information in the mother company will be very difficult.	This is information that all companies will need to have in order to consolidate account in the mother company and handle tax credits in their mother company tax return.
Getting access to this information in the mother company will be very difficult.	All companies that are consolidating accounts have to have physical (paper) or electronic reporting packages or information is systematized in a software package. In all instances this information is available at the mother company and it is easy accessible.
This is much more information that what the companies currently have.	All internal transactions between any units in the world is (most often electronically) available in the internal reporting packages in order to facilitate consolidation of the group accounts for elimination purposes.
Not possible to consolidate in jurisdictions that do not require such information.	Even if a jurisdiction does not require this information, a mother company will have to have this information as part of its reporting package in order to facilitate consolidation and elimination.

Hard to get access to tax return reporting.	A mother company (and any sub-group holding companies) will have to accumulate information on taxes paid in every tax jurisdiction in order that tax credits on dividends are handled correctly in all the relevant tax jurisdictions, including the mother company's home jurisdiction. Tax is thus either a part of the reporting packages, or it is reported separately up to the group tax department.
Compliance burden.	It is actually easier to comply with the CBC reporting requirements suggested by PWYP Norway than it would be to aggregate information into various geographical and organizational areas. The reason for this is that all consolidated information starts at either (1) the entity level inside a country or (2) the country level (sub-groups).
Beyond scope of financial reporting.	No, CBC reporting is not beyond the scope of financial reporting. It IS financial reporting. Investors and other constituents would find huge information improvement through financial reporting of revenues, costs and taxes at the country level.
May result in overly complicated initiative, whose costs may exceed its benefit.	This is not an initiative to get NEW information; it is an initiative to have the companies report the financial information they have given in the group accounts broken down to a country level. It is neither complicated nor costly.
Undue costs to smaller entities.	No, smaller entities would not have any more costs with this reporting than larger entities. All group companies has to have some form of reporting of revenues, costs and taxes in order to be able to consolidate their accounts across the company structure.
All figures will need to be accounted again, huge costs.	No, all figures have already been accounted for in the reporting packages, and it is essentially only a matter of disclosing them at a country level.
We will have to implement new accounting procedures and new accounting systems in order to comply with this requirement.	No, the accounting procedures has already taken into account the requirement to have reporting packages that report each entity/country for consolidation purposes, and no new accounting systems are needed over and above those that already exist for consolidation purposes.
Will give increasing competition costs for companies by revealing proprietary information.	Since all companies that want to access equity or debt markets would be liable for CBC reporting, no company would reveal more proprietary information than its competitors.
Concerns with the requirement in the Proposed Rule to prepare resource extraction payment disclosures on the cash-basis of accounting. Because registrants' existing reporting processes and accounting systems are based on the accrual method of accounting (and require certain payments to be capitalized), the Proposed Rule will require registrants' accounting groups to develop new information systems, processes, and controls. This burden comes at a time when registrants are already engaged in implementing numerous, large scale accounting standards.	A group needs to have insight into its tax payments both based on an accrual basis and based on a cash basis. The reason for this is that taxes on an accrual basis is necessary for the consolidated accounts, while taxes on a cash basis is necessary for the handling of tax credits in the mother company's (or any sub-holding company's) tax return.
No benefit for investors because of commercial, contractual and legal issues as well as significant costs due to CBC.	This is plainly wrong. First, investors will have significant benefit, potentially the largest benefit of all constituents, of CBC reporting. Secondly, the costs associated with CBC reporting are greatly overestimated, as this information is available at mother company level already.

'Legal issues'	
We will be forced to break laws in the host country.	When asked which countries this was (companies did not back up this information with any sources), companies identified Qatar, Cameroon, China and Angola. Civil society from Cameroon has later demonstrated that no disclosure prohibition exists. Qatar's Ministry of Energy and Industry states that no disclosure prohibition laws has been drafted and also prohibits interim disclosure of categories of payments that are not covered by Section 1504 in Dodd-Frank. Petrobras says that they are active in 29 countries and do not know of any government in those countries where disclosure of payments is in breach with any country laws. **Another thing is that ALL the extractive industry companies have, if they have done their job, settled contracts with the respective governments whereby there are clauses in any and all the contracts that provide for that information can be legally disclosed if required by government legislation.**
We need exemptions.	As the group consolidation processes (and thus reporting packages) and mother company tax returns are mandatory processes for any group company, it is difficult to see what should be the reason for any group company to be granted exemption.
'Definition issues'	
What is 'tax'? What is 'tax governance'?	PWYP Norway's CBC reporting proposal is basing itself on what the companies are already defining as taxes for consolidation purposes and for home country tax return purposes. To the extent that a mother company would require more information from the subsidiaries in order to do CBC reporting, this is easily done within the reporting packages.
Not clear what kind of info is required and its aim. Tax info for a specific country is based on local statutory accounts and may not meet the same requirements as consolidated financial statements.	Revenue, cost and tax data should be based on the accounting principles in the consolidated financial statements. Taxes paid are based on local statutory accounts and are reported up through the group structure until it reaches the group tax department for tax credit purposes. To the extent more information is required, it is easy to adjust the reporting packages for this purpose.
Not clear what global tax governance is. Improving tax governance at global level through disclosure in financial reports is outside the scope of general-purpose financial statements. A unilateral requirement by the EU for EU companies would not help increase global tax governance. Competitive disadvantage for EU companies.	Governance is the act of governing. It relates to decisions that define expectations, grant power or verify performance. This is typical acts that an investor would do in relation to a corporation, and that a company's management does in relation to its operations. Good governance is dependent upon that there exist consistent and reliable information to form such opinions (expectations setting, granting of power and verification of performance) on. As for competitive disadvantages; it is more likely that a government would enter into a business relationship with a company that are transparent and adhere to CBC reporting than a company that would like to shy away from such disclosures. Any government would ask itself why a company would try to avoid a requirement that all other companies are complying with.
Not clear what global tax governance is. Inappropriate to replace legal instruments that national governments consider the best suited to manage their tax systems. Difficulties if info disclosed doesn't match the data of local tax administrations due to methodology or homogenisation criteria used.	A tax administration would already have insight into the principles that the local tax return is based on, and it would be clear that any reporting based on mother company requirements would necessarily differ in certain areas compared to local rules. However, insight into these differences would give rise to tax harmonization across borders over time.

Governance should be addressed at global level and not through financial reporting.	An investor's governance must be based on that the company he owns a share of gives him and other constituents the necessary information to form informed decisions on. This is only done through financial reporting, and CBC reporting is just that, only broken down to country level.
What is a country?/'country of operation'?	A country is exactly what the company has defined as such in its consolidation process, or the listing according to ISO-3166 published by the International Organization for Standardization, whichever is the lowest level. To the extent that revenues, cost or tax has been singled out to be treated within the rules of a separate jurisdiction for accounting or tax purposes,that would also form the definition of a country as long as that does not combine countries on the ISO-3166 list. The ISO-3166 has both alpha-codes and numerical codes to suit non-latin alphabets. Example: Allowing the companies to report on a more detailed level than the ISO-3166 list is in order to cater to that for example companies may have set up their jurisdictions at a lower level, for example at state level in Canada like Alberta, than the ISO-3166 listing, and allowing this would counter any cost arguments of having to do additional work to get to the country level (in this case Canada). A company with two different jurisdictions in Canada could thus report for example Alberta, Canada and Saskatchewan, Canada or only Canada.
What is a project?	PWYP Norway does not promote independently reporting at the project level, and one would need to approach the Dodd-Frank process in order to get a definition of a project. That being said, PWYP Norway's opinion is that a project could never combine operations across the national borders as defined by the ISO-3166.
An issuer should be allowed to treat all of its operations in a single country as a 'project'. (This is in accordance with the EITI requirements).	• PWYP Norway does not promote independently reporting at the project level, and one would need to approach the Dodd-Frank process in order to get a definition of a project. That being said, PWYP Norway's opinion is that a project could never combine operations across the national borders as defined by the ISO-3166. It should be noted here that it may actually be in a company's best interest not to pursue opacity in this respect: • People living on an extraction site or in countries where there are disputes over resources wonder how much money that project is generating. It might even spark conflict or war. One example is the oil fields in South Sudan where there is also an interest from North Sudan. • Not knowing what a project generates may also give raise to wild speculations about its worth, and this in itself may lead to conflict.
Costs related to tracking, collecting and disclosing information at a more detailed level would exceed the benefits.	PWYP Norway proposal does not increase the tracking and collecting of information as this information is already in the reporting packages/electronic capture in computer software. It is only asking that the information that is tracked and collected is disclosed at country level as defined by ISO-3166 or lower depending on the company's reporting routines.
A geographic definition recommended – a country-by-country basis for project reporting, consistent with the EITI, fx American Petroleum Institute's ('API') suggestion to define 'project as ~technical and commercial activities carried out within a particular geologic basin or province to explore for, develop and produce oil, natural gas or minerals.' As it is geographically based, such a definition would be consistent with the EITI reporting framework.	PWYP Norway does not have an independent opinion on the definition of a project. As for the definition of a 'country' in the CBC reporting, we refer to the ISO-3166 listing.

How to define materiality? Is 'de minimis the same or not as materiality'? 'Not de minimis' and materiality should be determined by reference to the consolidated financial statements of the issues and the existing materiality guidance provided by SAB 99 and FASB Concept 2.	PWYP Norway is of the opinion that all the countries that comprises a company's revenues, cost or tax items should be reported without exception. It is actually easier (but takes some more columns in a spread sheet format) to report all countries that go into the consolidation process than to start a discretionary process to try and define a materiality in order to not report a country. As for materiality on the project level, PWYP Norway does not have an independent opinion on that as that is not part of the proposal from PWYP Norway.
Only if it is 'material to the company' Before considering the term 'not de minimis' in the context of the Proposed Rule, one must first consider the terms 'project' and 'payment'. These three terms are explicitly linked, and conclusions or alterations concerning 'project' and 'payment' will impact how 'not de minimis' should be applied. Given that the resource extraction payment disclosures are intended to be used by investors, it appears logical to consider existing financial reporting definitions if 'not de minimis' is to be defined.	CBC reporting entails reporting ALL the countries. When it comes to projects, PWYP Norway does not have an independent opinion on that and interested parties should approach the Dodd-Frank process in order to get a better understanding of that.
Definition of payments?	PWYP Norway's definition of tax payments is what is paid at an entity level by the entity to any government level, except Value Added Tax (VAT) and employee taxes, within the accounting period following from the mother company's financial statement period (which governs the reporting of subsidiaries up to the mother company).
'Corporate income taxes are calculated at entity level. Corporate income taxes are levied on an integrated energy company, such as Petrobras, which is active in all segments of the oil industry, are based on the entirety of its operations (e.g. upstream, downstream, biofuels, transportation and so forth). As a result, whether based on the scope of the proposed rule or when limited to a company's upstream business, the disclosure of corporate income taxes for an integrated company would require impractical apportionment calculations. Taxable revenue included in the scope of the rule may be deducted against an expense outside the scope of the rule. The commission should clearly address the treatment for integrated energy companies in the Final Rule. In our opinion, an exemption should be given for integrated companies with respect to corporate income taxes and other taxes based on the same concept.	PWYP Norway does not independently pursue Project reporting, and we would have to refer to the Dodd-Frank process in order to get a resolvement of this issue. When it comes to PWYP Norway's CBC reporting format, this would entail that a group reported at a country level how much revenues, cost and tax is coming from the country in question, and any payments to governments would be restricted to the taxes paid, including any tax payments via majority-owned national companies.
Payments to companies that are majority-owned by a foreign government would not be subject to reporting under the new rule if the payments are such that would be paid to any other company operating in a commercial capacity, such as payments by joint venture partners to the company as operator of a well or field and payments by commercial contract counterparties. Without this clarification, the rule could be construed to require disclosure of every commercial payment to such companies.	PWYP Norway does not independently pursue Project reporting, and we would have to refer to the Dodd-Frank process in order to get a resolvement of this issue. When it comes to PWYP Norway's CBC reporting format, this would entail that a group reported at a country level how much revenues, cost and tax is coming from the country in question, and any payments to governments would be restricted to the taxes paid, including any tax payments via majority-owned national companies.
What is commercial development of oil, natural gas or minerals?	PWYP Norway's CBC reporting is asking that extractive industry companies are reporting as a minimum their upstream revenues, cost and taxes as well as production, and this reporting should be possible to link with financial information in the group financial statements. An extractive company would normally not link financial information from upstream with financial information from downstream. These two operations are normally separated by legal, organizational and accounting regulations and are rolled up in the consolidation process through different routes.

'This should be limited to only exploration and productive activities "upstream business'), as contemplated by the EITI and consistent with the Commission's existing definition of 'Oil and Gas Production Activities under Rule 4-10 of Regulation S-X because these are the primary sources of revenues in countries rich in oil, gas, and minerals and is widely understood in practice by industry and users'.	Yes, PWYP Norway limits the suggestion to the upstream part of the extractive industry company, but would encourage companies to also think through whether it is a benefit to disclose the same type of information for their other businesses. Derivatives that are linked to upstream revenues, costs or taxes needs to be reported together with upstream, i.e. all cash and accounting information related to the upstream business.
Subsidiaries, or an entity under the control of the resource extraction issuer' .	PWYP Norway's CBC reporting entails reporting of all revenues, cost, and tax items that goes into the consolidation of an extractive company's upstream business, including its associated production volumes. This question mostly relates to the Project-by-Project reporting suggested under Dodd-Frank, and PWYP Norway would refer any questions related to this to approach this process in order to get a clarification.
The Commission should provide instructions as to how to disclose a production entitlement in kind. Which unit of measure should we use? Volume? Should we be required to provide a monetary Value? If so, in which currency?	PWYP Norway CBC reporting would require disclosure of gross and net production volumes, and the difference would be in-kind volumes to be reported as volumes. Companies should report the value of these in-kind volumes based on their value in the same currency as the company's other produce are sold or as a minimum in the currency of the mother company financial statements.
Only consolidated subsidiaries and entities under control of a resource extraction issuer should be subject to new disclosure rules.	Yes, it is the consolidated numbers in the financial statement that we want broken out on each country, but the country-by-country report should list all entities that owns assets that were previously held by the company and that under existing agreements there exist options or other arrangements whereby the assets may return to companies within the consolidated group.
Disclosure should be based on accounting principles used by the issuer (weather local GAAP, IFRS, or US GAAP), without reconciliation.	Yes, disclosure needs to be based on accounting principles used by the company that consolidates the entities in the group structure, but the country-by-country reporting should include all entities that is part of the consolidation, and thus it becomes absurd that the reporting should not reconcile with the financial statements.
Form of disclosure.	PWYP Norway's CBC reporting proposal does not entail tracking and collecting any other information than what is already is being captured in the annual report. Actually, what is being asked is only a country-by-country break-down of some of the information in the Form 20-F reporting, and it would be naturally to disclose the information in the same process.
• Disclosure annually under cover of a stand alone report to form 6-K to be submitted 180 days following the end of the most recent calendar year. Under this scenario, the process of tracking, collecting and disclosing payment information would not delay or impact filings of the annual report to Form 20-F. • Payment information should not be audited – should not be reported on accrual basis.	The information that is asked for is a break-down of financial information in the 20-F report, and the information is almost entirely available in the internal reporting packages/reporting software within the companies, and there is thus no need to disclose this information later than the 20-F report. Payment information is part of the reporting up the group structure to be included in the mother company's tax return for tax credit purposes. Thus, the information already forms part of documents that is naturally audited, as tax credits affects the tax
'The Chinese threat'	
If we publish this information we will have an information disadvantage and the Chinese will get all the contracts.	• PetroChina, CNOOC and Sinopec will already be covered by Dodd-Frank. When it comes to the proposal by PWYP Norway this would entail any company that approaches transparent equity and debt markets in order to secure

	financing in competition with companies that are already on such markets are asked to provide the same transparency as these companies. In a world where 'everybody' has to provide this information, there would also be significant pressure from the various governments to have the remaining companies provide the same type of information in order to be comparable to the majority of extractive industry companies in the world.
	• Statoil has won contracts over Chinese companies in Angola even though it provides this type of information. PWYP Norway believe that this type of regulation actually favors transparent and open companies, and that the regulation levels the playing field among extractive industry companies by making sure that it is not the 'worst' ones who is allowed to define the 'rules' anymore.
	• HK stock exchange enacted rules.
	• Several companies have listed at HK stock exchange after they enacted these new regulations:
	  • Kazakhmys (giant copper mining company from Kazakhstan),
	  • United Company Rusal (the world's largest company from Russia),
	  • Newton Resources Ltd. (a Chinese iron ore mining company)
	  • OM Holdings Ltd. (a Singaporean mining company)

Companies will leave the stock exchanges in NY with these new regulations.	• PWYP Norway's proposal would mean that all companies that are seeking equity or debt on transparent markets in the US, EU or Norway would have to comply with these rules. Many other markets would very likely follow suit as investors would be attracted to stock exchanges with companies supplying this type of information. In order to stay competitive, stock exchanges in countries like Canada, Australia and other places would thus most likely enter into the same type of rules (it being a demand from investors, civil society or governments) • Kosmos is a US-based company with a market cap. Of apx. \$6.3 bin when it floated it's IPO on the New York Stock Exchange after the new US regulations.
'Exemptions' (partly overlap with legal issues)	
• an exemption should be given for integrated companies with respect to corporate income taxes and other taxes based on the same concept • exemptions for certain categories, such as smaller reporting companies and foreign private issuers • should permit a limited exemption from disclosure for payments prohibited to be disclosed by law or agreement. • subject to conflicting legal responsibilities. • should permit foreign issuers to disclose payments made to foreign governments in the manner that their home country regulators or accounting standards, or regulators in other jurisdictions in which they do business, may require. • Under this exception, if a foreign issuer is already required to disclose resource extraction payments made to a government, the foreign issuer would report those payments to the Commission to the extent and in the manner required under that parallel transparency regime. Such an exception would eliminate the potential for conflicting and overlapping disclosure requirements for issuers likely to be subject to multiple disclosure regimes. Alternatively, the Commission could limit such an exception to payments reported under an EITI-compliant	Under the PWYP Norway's CBC reporting there would be no exemptions. Integrated companies are consolidating their upstream and downstream business separately and it is only combined at the top level financial statements. What is asked is that also integrated companies are asked to provide for CBC reporting of their upstream extraction business. This would also be in the best interest of these integrated companies, because there would else always attach a suspicion that they are exempted in order to hide information.

regime. Foreign issuers would nevertheless be required to disclose, in accordance with the Commission's requirements, all payments to the United States federal government and payments to foreign governments that an issuer is not required to disclose elsewhere. • should exempt from disclosure payments for which disclosure is prohibited by law, as well as payments for which a confidentiality agreement is in place as of the date the final rule comes into effect. The Commission should not require issuers to choose between observing the law and their existing commitments and complying with newly promulgated disclosure requirements. Such a choice could lead foreign private issuers to consider deregistration to avoid, on the one hand, incurring penalties and subjecting personnel to the risk of civil or criminal liability following prohibited disclosures or, on the other hand, breaching existing agreements by withholding payments or restricting operations to those for which payment disclosure is permitted. In addition, requiring issuers to disclose payments despite legal prohibitions would, as a practical matter, prohibit issuers subject to the new rule from doing business in jurisdictions and under circumstances that do not permit such disclosure. Such a prohibition goes beyond the purpose of the statute and could potentially cause significant competitive harm both to resource extraction issuers registered with the Commission and to the markets in which they participate. At a minimum, the Commission should exempt from disclosure payments for which disclosure is prohibited by law and allow a transition period with respect to disclosure of payments currently required by agreement to be kept confidential.	
'Format of reporting'	
If this goes into our CSR-report, we can tell a larger audience more about our operations than if it is in financial accounts.	PWYP Norway CBC reporting is a country-by-country breakdown of certain numbers in the companies' financial statements, and is thus financial information and should be published together with other financial information. A CSR-report is not a document that has any legal implications or sanctions attached to it.
This will require new reporting and accounting systems.	Reporting will be done exactly as the company consolidates its accounts and does not require any new type of reporting or accounting systems (this information is already in physical (paper) or electronic reporting packages or directly in computer software, all easily accessible at mother company level.
This information will be so extensive that there is no electronic format that can handle this.	This claim falls on its own stupidity as the information is already in electronic reporting packages in most companies, while some companies still captures it physically (on paper) while some companies has automated the capture of this information in computer software packages. However, it is always information in the same format that is captured, so there are no need for new systems to extract and report this information.
How is this information to be reported? It will not be understandable to anyone.	PWYP Norway's CBC reporting has a format suggestion for the reporting that closely follows how financial statements themselves are reported. Thus, if someone does not understand the country-by-country reporting, they would consequently not understand the financial statement information itself (which many people does not do due to the substantial level of aggregation and technical jargon, a fact CBC reporting can partly solve as the numbers would be more understandable in a country setting).

How will this information be used anyway?	This information can be used by investors in their investment decisions and by any other interested constituent to form opinions on the company's performance within each country it operates.
Disclosure of financial info is best regulated through global accounting standards (e.g. IASB). Competitive disadvantage for EU companies. CSR requirements are best met through additional voluntary reporting processes.	PWYP Norway's opinion is that accounting standard setters like IASB has failed to come up with anything but aggregated reporting in financial statements, and have completely failed to cater to the interested investor or other constituent to provide for information at a country level that give meaningful insight into extractive industries. These standard setters are at any time encouraged to do this, but up till now this has not been a priority for these bodies, and they have thus utterly failed in part of their reason to exist.
CBC reporting has never been requested by investors/ other capital market participants. Transparency Directive, EU Accounting Directive and IFRS 8 already provide the info investors need. Not clear what is the aim and target group of this measure. Financial statements are already too complex and confusing for investors.	This is actually wrong. Investigations done by PWYP Norway suggest that CBC reporting is high on the list of desires by investors. However, this interest has not been captured by standard setters, because these mainly communicate with groups like accountants and auditors that speak on 'behalf of' investors. Thus, if one went to the investor community and asked specifically whether CBC reporting would be of interest, one would get a resounding YES across most of the investor community. Financial statements are confusing because they are aggregated. CBC reporting would reduce the complexity of the reporting by getting it down to a country level, which is more understandable. The view is however also quite patronizing towards investors, as it seems like investors are not the main constituents of financial statements anymore. They ARE the owners of these entities.
Info needed by investors is already met by EU adopted IFRS, Transparency Directive, Accounting Directive and IFRS 8 Operating Segments. Besides, IASB has issued a Practice Statement on Management Commentary and, in the UK, the Accounting Standards Board has issued a Reporting Statement for companies preparing a Business Review or Operating and Financial Review. Outside the scope of general purpose financial statements. Potential confusion for shareholders/other users. Risks of contradictory/inaccurate reports. Competitive disadvantage.	No, CBC reporting in the financial statement directed at investors and other interested constituents are not met by possible other disclosures done by extractive industry at aggregated levels. The intention is to AVOID the aggregation and give the same data at country level from all extractive industry companies.
Improving domestic accountability/governance in natural resource rich countries is outside the scope of general-purpose financial statements.	CBC reporting will improve accountability towards both investors and other constituents, and that IS within the scope of financial statements.
'Governance'/'Political issues'	
Norway cannot implement other regulation than the EU because we will be bound to implement a EU directive.	An EU directive would be a minimum standard for reporting. Norway can have stricter regulation as long as they are made effectual for all, and it is possible to influence the EU over time to move in a direction of extended regulation if these does not come in the first round.
Norway can't do it when other countries are not doing it.	Statoil (and other companies) will win in relation to other governments on being transparent. This builds trust with governments used to companies trying to keep contracts secret. Statoil may loose contracts where there is corruption in the picture and transparency is a risk for those awarding these contracts, when corrupt companies are more 'competitive' (when it comes to corruption).

Norway have to wait for the EU in order to not having to change our rulemaking again afterwards.	It is not necessary to change anything afterwords unless the EU actually implements a stricter minimum regulation than Norway. If Norway implements a regulation as proposed by PWYP Norway, this will be in line with what you may expect that the EU (and the USA) will either implement or the direction that will be taken over time.
This will demand more forms to be filled out and we do not want to add to the burden of forms that companies have to fill out and report on.	The purpose is not to reduce the number of forms as much as possible, but rather ensure that those forms being used are most purposeful, and that these forms can replace other forms. It is PWYP Norway's opinion that a CBC has the possibility to reduce the need for other financial reporting and processing of information. Amongst other things, a standardised CBC will have a potential positive effect that statistical information about the extractive industries is given and can be standardised on a global level, and this in itself will be a significant more work efficient and also an information enhancement. According to PWYP Norway's opinion, the value of this exceeds the low cost it will be to complete the actual reporting, particularly considering that the companies work can be standardised via the reporting packages/reporting software and that the value of statistical information will increase year by year.
Why is this more important than other good purposes?	The CBC is important in order to ensure insight in an industry that over many years have been accused for corruption, secrecy and massive transfers from poor, but resource rich countries to companies registered in secrecy jurisdictions. To that degree that a CBC will lead to less problems in relation to these areas by that it will be more difficult to bury information about what is going on a country level in the financial accounts key figures this will lead to that more revenues are taxed in these countries. This may lead to that these countries to a larger extend can mobilise their own capital in order to build a better society with better education, and through that possibly to work to avoid child labour, gender equality, raise environment and work standards etc. A CBC is about those who have invested in the extractive industry; investors by raising capital, and resource rich countries by giving access to the resources; gets access to information about the use of those resources, in addition to that the citizens also can hold their government to account for the use of the revenues it receives. This goes both ways.
This is yet another reporting in 'the purpose of the good'.	This is not a just a reporting for the good purpose. This is a reporting of financial information that will give investors and other constituencies' insight into how the extractive industries use the resources at their disposal (capital and reserves), and not at least how taxes being paid are being used in the countries that receives it. The least the extractive industry can do is to be transparent about where it has activities, how large these activities are with a background in revenue figures, cost figures, tax figures and production figures, as this is information that is fundamental for vital purposes.
So, which are all the benefits for investors with this reporting? Can investors screen companies on the basis of a CBCR?	Investors will have multiple uses of this type of information. First, it will give the investors insight into enough information about the company that he or she on an independent basis (not being dependent on huge databases, market gossip or various analysts) can form opinions on whether to invest or divest in share holdings in the companies in question. Second, investors may have a more fruitful discussion with the board of directors and

	between themselves about the companies operations. Third, investors may do their own valuation of the companies, and are thus better equipped to take decisions on whether they agree with the market pricing or not (partly overlapping with the first). Fourth, it becomes easier for investors to understand company dispositions like sale of assets, mergers, take-overs etc.
If we do this in Norway the companies will threaten us and say that they will move from the country and we'll loose hundreds or thousands of work places.	A company that wants to leave Norway because of country-by-country reporting would potentially harm their own business considerably. Questions will be raised with regard to why they left, what they have to hide etc. This can become very painful for management in these companies. Many governments around the world as well as civil society are crawing this type of information, but up to now it has been denied investors and other constituents at a company level (EITI works at a country level).
Can PWYP Norway estimate exactly how much it will cost for a company to report this? In what range are we talking?	As this information is already in the reporting packages/ reporting software that collects information about all the entities that is being consolidated, it is easily available at the group level. How much it would actually cost is hard to estimate because it depends whether we are talking about a company engaged in a few countries or a company engaged in many countries (only upstream operations are affected by the reporting, including all internal trading in oil and gas). Depending on systems it should take two people, one working on financial statement information and the other working tax information, to use up to half an hour to compile the information for one country (same type of information that is to be reported for each country, same place to find the information, same reporting format for all the information, and thus a substantial part of the reporting could actually be automated depending on systems). Two people should thus be able to cover 14-16 countries during a workday. A fairly large corporation represented in 40 countries would thus typically employee two people for maybe 3 days to get the information into the reporting format. To this can be added management and IT systems time in setting up the processes. In total maybe 10 workdays can be used in all by a company represented in 40 countries, or in actual time maximum 1 work week.

NOTES:

Publish What You Pay Norway

Publish What You Pay Norway (PWYP Norway) is the Norwegian chapter of the international PWYP network. The network organise and mobilise over 650 organisations from over 50 countries. We advocate for standardised country by country reporting and increased transparency and financial integrity in the extractive industries. The secrecy surrounding trade with natural resources harms those the resources are managed on behalf of. 2/3 of the world's poorest people live in resource rich countries. It is urgent that citizens, government institutions, politicians, researchers, investors and other users of financial information get access to standardised valuable information so that societies interest can be upheld and governments and companies can be held to account. It is urgent that the economic potential generated from developing countries´ trade with non-renewable and finite resources is translated into a sustainable development and common good. For more information, please see **www.pwyp.no**

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