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“Publish What You Pay” Guidance Finalized

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Natural Resources Canada has finalized its implementation tools for the *Extractive Sector Transparency Measures Act* (ESTMA), which was proclaimed into force in June 2015. Commonly known as the “publish what you pay” standards, ESTMA establishes mandatory reporting standards for payments made by Canadian extractive companies to governments worldwide.

The finalized implementation tools include a Guidance document, Technical Reporting Specifications, a Reporting Template and a Contact Form. The Guidance provides general information and examples with respect to the scope of commercial development of oil, gas and minerals, which entities are subject to ESTMA and therefore must report, what type of payments must be reported and where substitution with another jurisdiction’s reporting requirements may be acceptable. For example, the Guidance confirms the following:

- Unless an activity is integrated into extractive operations, it is not subject to ESTMA (making most refining, smelting, marketing, distribution, transportation or export activities outside ESTMA’s scope).
- A company that is not subject to Canadian law and that has a subsidiary operating in an extractive industry in Canada is not subject to ESTMA even if the subsidiary is a reporting entity under ESTMA.
- However, if a company subject to Canadian law controls an entity (including “control” as established under IFRS or GAAP) involved in the commercial development of an extractive resource in a jurisdiction other than Canada, the controlling Canadian company is a reporting entity under ESTMA.

The Guidance also provides clarification on whether payments made to state-owned enterprises are reportable payments under ESTMA. If the state-owned enterprise is acting as a commercial business, the payment would not likely be a reportable payment. If the state-owned enterprise is exercising a power, duty or function of government, such payment would likely be reportable.

Reporting entities must enrol with Natural Resources Canada prior to submitting a report under ESTMA. Natural Resources Canada is encouraging enrolment before June 30, 2016, and has provided a Contact Form for disclosure of basic information as well as contact information for the reporting entity’s primary and alternate contacts.

In addition, Natural Resources Canada published an information sheet that includes an overview of ESTMA’s reporting requirements, information on enrolment, details regarding payments made to Indigenous governments and details regarding substitution with another jurisdiction’s publish-what-you-pay requirements. Currently, European Union and European Economic Area member countries that have implemented the EU Accounting and Transparency Directives have been determined to be acceptable substitutes. Although not yet confirmed by Natural Resources Canada, the proposed U.S. Securities and Exchange Commission’s transparency rules for resource extraction issuers and Québec’s *Act respecting transparency measures in the mining, oil and gas industries* are also expected to be acceptable substitutions.

Under ESTMA, reporting entities are not required to disclose payments made to Indigenous governments until June 1, 2017. Although the information sheet confirms that ESTMA will not require the disclosure of impact and benefit agreements between reporting entities and Indigenous governments, payments made under such agreements must be considered with respect to ESTMA reporting obligations.

For further background, read our publications on the standards: [June 2, 2015](#); [October 30, 2014](#) (PDF) and [January 22, 2014](#) (PDF).

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