

**DE BRAUW
BLACKSTONE
WESTBROEK**

Country-by-country reporting mandatory for mining and logging operations

As of the financial year 2016, large Dutch undertakings operating in the mining or logging industries have to report their payments to national, regional and local governments, including state-owned undertakings, on an annual and country-by-country basis. Payments to be reported include all cash and non-cash payments individually or collectively amounting to EUR 100,000 or more and relating to production entitlements, certain taxes, royalties, dividends, signature, discovery and production bonuses, licence and concession fees, and payments for infrastructure improvements. We recommend that undertakings in these industries check whether they are affected by the new rules.

Extractive industries are broadly defined. They include any activity involving the exploration, prospection, discovery, development, and extraction of:

- coal and lignite
- crude oil and natural gas
- metal ores, including iron ores and non-ferrous metal ores, uranium and thorium
- chemical and fertiliser minerals

Logging is defined as the logging of primary forest and wooded land: forest and other wooded land of native species where there is no clearly visible indication of human activity and the ecological processes are not significantly disturbed.

The following information on these payments has to be reported:

- the total amount of payments made to each government and the total amount per type of payment (for example, production entitlements, certain taxes, royalties, etc.) made to each government
- if these payments are attributed to specific projects, what project they have been attributed to, including the total amount per type of payment made for each project and the total amount of payments for each such project
- if payments are made in kind, the value of that payment, including how the value was determined and, where applicable, the volume of that payment.

The following companies and partnerships are subject to these new reporting requirements:

- “large” entities as defined in the Dutch Civil Code: Dutch companies, limited partnerships and general partnerships that meet at least two of the following criteria on two consecutive balance sheet dates: a balance sheet total of more than EUR 20,000,000, a net turnover of more than EUR 40,000,000, and an average of at least 250 employees

- Dutch Public Interest Entities (in short: listed companies, banks and insurers).

Payments must be published in a separate payments report which is not subject to shareholder adoption or auditor approval. All reporting entities must file their payments report with the Trade Register. The payments report must be filed within 12 months after the end of the relevant financial year.

Subsidiaries of reporting entities are exempted from the country-by-country reporting requirements if their parent entity publishes consolidated financial statements, provided that the parent entity publishes a separate consolidated country-by-country payments report.

Entities that comply with third-country financial reporting requirements which are recognised as equivalent to the requirements of the European Accounting Directive are exempt from these new reporting requirements. However, they will have to comply with the Dutch publication requirements and file their equivalent payments report with the Trade Register.

Once the Dutch law implementing the amended EU Transparency Directive enters into force, these requirements will also apply to listed companies established elsewhere in the EU or outside the EU (third country issuers) for which the Netherlands acts as Member State of Origin. These companies will be subject to a separate regime. They will have to file the payments report with the AFM within six months after the financial year. This law has already been adopted by Dutch parliament and is expected to enter into force shortly.