TRANSPARENCY INTERNATIONAL EU

UNDER THE SURFACE

Looking into payments by oil, gas and mining companies to governments

Transparency International EU (TI EU) is part of the global anti-corruption movement, Transparency International, which includes over 100 chapters around the world. Since 2008, TI EU has functioned as a regional office of the global movement and closely works with the International Secretariat in Berlin, Germany.

Transparency International EU leads the movement's EU-focused advocacy, in close cooperation with national chapters worldwide, but particularly with the 24 chapters in EU member states. TI EU's mission is to prevent and address corruption and promote integrity, transparency and accountability in the EU institutions and in EU internal and external policies, programmes and legislation.

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Authors: Elena Gaita, Transparency International EU;
Don Hubert, Resources for Development Consulting

Research, methodology and data analysis: Don Hubert, Resources for Development Consulting

Contributors: Carl Dolan, Lucinda Pearson and Ilkka Penttinen (Transparency International EU), Julius Hinks, Suzanne Mulcahy and Nieves Zuniga (Transparency International's Secretariat), and Lisa Caripis (Transparency International Australia).

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Authors

Elena Gaita, Transparency International EU;
Don Hubert, Resources for Development Consulting

Research, methodology and data analysis

Don Hubert, Resources for Development Consulting

Graphic design and formatting

beëlzePub

Copy editing

Vicky Anning

Don Hubert is the President of Resources for Development Consulting, a firm that assists resource-rich developing countries to secure a 'fair share' of extractive sector wealth by analysing fiscal regimes, modelling past and future government revenue, and assessing vulnerability to tax avoidance.

The firm has conducted economic analyses of petroleum and mining projects in more than 20 countries for clients including governments, World Bank, donors and NGOs.

Dr Hubert is the author of *Many Ways to Lose a Billion: How Governments Fail to Secure a Fair Share of their Natural Resource Wealth* (PWYP 2017) and *Finding the Missing Millions: A handbook for using extractive companies' revenue disclosures to hold governments and industry to account* (R4D and Global Witness 2018). He holds a PhD from the University of Cambridge.

RESOURCES for DEVELOPMENT CONSULTING

ABBREVIATIONS

BBLS	Barrels
BOEPD	Barrel of oil equivalent per day
CPI	Corruption Perceptions Index
DMF	District Mineral Foundation
DG FISMA	European Commission's Directorate General for Financial Stability, Financial Services and Capital Markets Union
EC	European Commission
EITI	Extractive Industries Transparency Initiative
EU	European Union
GDP	Gross Domestic Product
HZL	Hindustan Zinc Limited
IMF	International Monetary Fund
IRP	Interest rate parity
JV	Joint venture
LME	London Metals Exchange
MMBO	Million barrels of oil
MMDRA	Mines and Mineral Development and Regulation Act
MMm^{3}d	Million cubic metres per day
NMET	National Mining Exploration Trust
NRGI	Natural Resource Governance Institute
NOC	National oil company
NYSE	New York Stock Exchange
PE	Production entitlements
PMKKKY	Pradhan Matri Khanij Kshetra Kalyan Yojana – Prime Minister's Development Programme for Mining-Affected Regions (India)
PSA	Production sharing agreement
PSC	Production sharing contract
PtG	Payments to Governments
SEC	Securities and Exchange Commission
TCF	Trillion cubic feet
TI EU	Transparency International EU
WTI	West Texas Intermediate
YPFB	Yacimientos Petroliferos Fiscales Bolivianos

GLOSSARY[1]

Barrels of oil equivalent	A way of measuring energy production or consumption across different energy sources. Other hydrocarbons like natural gas and coal, and occasionally even renewables, are measured for the amount of energy they produce compared to a barrel of oil.
Brent crude	The leading global benchmark for Atlantic basin crudes, it is used to price two thirds of the world's internationally traded crude oil supply. Brent is a light, sweet crude oil produced in the North Sea, which usually trades within a few dollars of West Texas Intermediate (WTI).
Concession	A lease agreement by which an oil company can enjoy the exclusive right to produce oil in any given area, as ownership of the oil is transferred from the natural owner, such as the state or landowner, to the lease holder at the wellhead.
Corporate tax	A tax assessed as a percentage of the net profits of a company after deducting allowable expenses.
Cost oil	In a production sharing contract, the amount of oil that the company recovers before calculating the production share between the state and company. It is determined by the operating and capital expenditure of the project.
Cost recovery	The process of recouping the costs of producing a commodity, usually established in the fiscal regime.
Crude oil	A fossil fuel formed from organic material over millions of years and extracted directly from the rocks where it is found, which can be further processed into various fuels and petrochemical products for consumers. Natural gas is often found dissolved in the oil.
Host country	Country where an investment is made.
In-kind payment	Payments made to a government in the form of goods instead of cash. In extractives, it is a payment using the commodity itself as currency in lieu of a share of financial revenues.
Joint venture	An agreement in which companies, each with a share of the equity, work together to conduct exploration or production of an extraction project.
National oil company	A company, either wholly or partially owned by the government, that is created to undertake commercial activities on its behalf.
Petroleum	The term to denote both crude oil and petroleum products produced by refining.
Production sharing contract (PSC) or production sharing agreement (PSA)	An agreement in which the oil and/or gas recovered is shared between the government and a private company, after deduction of investment and production costs (in lieu of, or in addition to, cash payments of taxes). It is also called a production sharing agreement (PSA).
Profit oil	In a production sharing contract, the amount of oil that remains after costs are deducted. This is split among project investors, including government entities, where applicable.
Project-level payments	Payments made to government entities that are attributable to a particular project.
Ring-fencing	The separate taxation of activities on a project-by-project basis, which enables the government to collect tax revenue on a project each year that it earns a profit. Without such requirements companies can offset the tax obligations of more profitable projects with the sizable losses incurred by a project still in its early stages.
Royalty	Payment due to the host government in return for the company having access to the resource. The payment is based on either ad valorem, a percentage of the value of the resource extracted (e.g. 4 per cent on the sale value of gold extracted) or on a per unit of extraction basis (e.g. 4 per cent on each ounce of gold produced).

PART I

Erzberg mine in Eisenerz, Austria / Photo via PxHere

1. INTRODUCTION

The European Commission (EC) is poised to review the European Union (EU)'s transparency legislation on payments to governments by large EU-registered and listed oil, gas and mining companies. At this pivotal moment, Transparency International EU (TI EU) has looked at the evidence regarding implementation and enforcement of legislation that was adopted five years ago. The goal of this report is to help the EC make an informed review of current practice.

Our research highlights the value of the EU's new revenue transparency rules, in particular in traditionally opaque countries, such as Angola and Equatorial Guinea, which are not part of the Extractive Industries Transparency Initiative (EITI). It has also been useful when it comes to shedding light on companies that are neither headquartered nor listed in the EU, such as ExxonMobil, which has reporting subsidiaries in Germany and Luxembourg. However, it also reveals the limits of analysing revenue payments using public domain data as well as the discrepancies in the way companies report. This is particularly evident when it comes to the different approaches that companies choose to adopt when reporting on their joint venture payments, the way they report on their *royalty* payments and payments in kind as well as the challenges related to the analysis of companies' corporate income tax payments vis-à-vis their other types of tax payments.

1.1 THE EU'S EXTRACTIVES TRANSPARENCY LEGISLATION ON PAYMENTS TO GOVERNMENTS

In 2013, the EU passed new transparency and accountability legislation requiring large oil, gas, mining and logging companies that are listed and registered in the EU to disclose their revenue payments to governments around the world.[2] The EU Accounting Directive requires reporting of EU-registered companies' payments to governments on a country-by-country and a project-by-project basis. This is the case for each country where a company operates and for each project to which payments have been attributed. There is also a similar provision in the EU Transparency Directive[3] targeting publicly listed companies.

Thanks to this game-changing legislation, similar laws have been adopted in non-EU countries, including Norway and Canada, while similar draft legislation is currently being considered in Switzerland and Ukraine and has been pledged by Australia's major opposition party. A mandatory reporting law in the United States awaits the Securities and Exchange Commission (SEC)'s new implementing rule after Congress repealed the previous rule in January 2017.[4]

BOX 1: Definition of a "project"

The EU Accounting Directive defines a project as "the operational activities that are governed by a single contract, licence, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. None the less, if multiple such agreements are substantially interconnected, this shall be considered a project."

At the beginning of 2017, the EU Accounting Directive was transposed into national law by all EU Member States. Two of those states – France and the UK – were early adopters, meaning that French and British companies published their first reports in 2016. The majority of European companies began reporting in 2017.

BOX 2: Overview of the disclosure requirements for extractive and logging companies under Chapter 10 of the Accounting Directive

Payments above €100,000 are broken down by category:

- Production entitlements
- Taxes on the income, production or profits of companies
- Royalties
- Dividends
- Signature, discovery and production bonuses
- Licence fees, rental fees, entry fees and other payments for licences and/or concessions
- Payments for infrastructure improvements

Between 2018 and 2019, the EC will review Chapter 10 of the Accounting Directive – the section that sets out the requirements for reporting by extractive companies on payments to governments. According to the legislation itself, the EC was required to publish its report and recommendations to the European Parliament and Council by July 2018.[5] However, due to internal delays in launching the consultation process, the review is only due to be completed in the first half of 2019. Once the review has been finalised, the EC can recommend that the legislation is revised, with a new proposal to amend the existing text, or it can recommend that the legislation is maintained in its present form until a new review takes place.

A BRIEF HISTORY OF

EXTRACTIVES REGULATION

EXTRACTIVES industries includes oil, gas and mining sectors. Transparency in this sector has been recognised as an essential pillar in the fight against corruption.

The timeline below shows the development of transparency requirements for extractives industries in the EU and beyond

GLOBAL INITIATIVES

EU INITIATIVES

2003

The Extractives Industry Transparency Initiative (EITI) is launched - a global standard to promote the open and accountable management of oil, gas and mineral resources

2010

The Dodd-Frank Act is adopted in the US, with reporting requirements on payments made by oil, gas and minerals industries

2011

Deauville declaration of G8 countries on extractives transparency

2013

Norwegian legislation on payments to governments for extractives companies is adopted

2013

The European Union adopts mandatory disclosure requirements for the extractive and logging industries

2015

Extractive Sector Transparency Measures Act (ESTMA) enters into force in Canada

2016

In the US, the SEC adopts the implementing rule - Rules for Resource Extraction Issuers - under the Dodd-Frank Act.

2016

Early adopters, France and UK have their companies to publish their first reports after transposing the Directive

2017

In the US, the Trump administration repeals mandatory reporting law

2017

Majority of EU companies outside the UK and France publish their first payments to governments reports

2018

51 countries implement the EITI standard

2018

European Commission launches a public consultation on the EU's framework for public reporting by companies of all sectors

2019

New developments are expected in Switzerland, Ukraine and Australia

2019

The public consultation and review will be completed in the first half of the year

1.2 WHY REVENUE TRANSPARENCY BY OIL, GAS AND MINING COMPANIES MATTERS

Transparency in the extractive sector has been recognised as an essential pillar in the fight against corruption. In 2003, a global standard to promote the open and accountable management of oil, gas and mineral resources – the Extractive Industries Transparency Initiative (EITI) – was launched. This standard aims to enhance governance in resource-rich countries through the full publication and audit of company payments and government revenues from oil, gas and mining. As a voluntary commitment of stakeholders with shared goals, the global EITI structure comprises resource-rich countries, international and national extractive companies, civil society, investors and supporting countries.[6] EITI's coverage has grown rapidly since the initiative was launched. At the time of writing, 51 countries implement these standards.[7]

Natural resources can lift millions of people in the developing world out of poverty. However, they can also motivate and enable corruption, particularly given the large revenues involved, the remoteness of many operations, the secrecy surrounding many contractual arrangements and the discretionary power of public officials over national resources. This is part of a phenomenon known as "the resource curse".[8]

In most developing countries, progress on poverty eradication depends on the effective management of domestic resources and the revenues they generate. However, in the majority of countries considered to be resource-rich, there are persistent governance challenges, including high levels of corruption and secrecy. Of the 124 countries that score below 50 in Transparency International's 2017 *Corruption Perceptions Index*,[9] 73 are considered to be resource-rich (approximately 59 per cent), according to the latest *Resource Governance Index*.[10]

The revenues generated from oil, gas and mining exploration can be seen as a "managed trust" for citizens by their government. Extractive companies transfer considerable funds to host governments in the form of licence fees, royalties, dividends, taxes and support for local communities. These large financial inflows should contribute substantially to social and economic development; yet many resource-rich countries have not transformed resource wealth into well-being for their citizens. When revenues are not managed with transparency and accountability, mineral and petroleum wealth can fuel large-scale corruption, as well as poverty, injustice and conflict.[11]

Transparency provides a mechanism for re-shaping how wealth is managed and who benefits from it. Publicly-accessible information on how much revenue is being generated from a country's resources allows citizens to be informed and engaged in how this money is shared and spent.

It allows citizens to be involved in decisions on the sector, the terms of licensing agreements with companies and how their revenues are used for society. Information opens up the door for public scrutiny and helps to detect mismanagement and corruption. Disclosure that is standardised, publicised and widely accessible allows for transparency to have far-reaching positive implications on national policies.[12]

The objective behind companies disclosing payments to governments is to strengthen transparency and fight corruption, misuse of public money and illicit financial flows from resource-rich countries. Improved transparency serves to enhance the accountability of governments of extractive projects' host countries by holding them to account for the difference between what they should have received and what they have reported to have received; it also improves the accountability of the extractive companies themselves. Disclosure plays a critical role in encouraging greater stability in resource-rich countries by enhancing their investment security, benefitting both citizens and investors.[13]

The EU's mandatory disclosure requirements complement the EITI and ensure that companies publish the payments they make to governments worldwide by providing transparency about their operations in countries such as Angola, China, Equatorial Guinea, Qatar and Russia, which are not part of the EITI and may not be in the near future. Furthermore, companies that report their payments under the EITI have so far disclosed them at the company level. This has led to aggregated data, making it very difficult to scrutinise and track important project-level payments. On the other hand, disclosures under the EU Directive are required relatively quickly following the end of a financial year, so are considerably more timely than under the EITI (reports from which are usually

Oil rig in Monterey, United States

published at best two years after payments have been made).

With increased revenue transparency for large extractive companies, Transparency International EU has made use of publicly available company reports and analysed the data contained in project-level payments to governments reports.

The purpose of this publication is: a) to demonstrate the value of transparency by using the payment data produced under the Accounting Directive to carry out analyses of extractive sector projects; and b) to showcase how this data can be used to both strengthen accountability mechanisms and to improve the prospects that resource-rich governments secure a fair share of wealth from natural resources. This report also identifies shortcomings in company reporting against the existing regulations and shortcomings in the regulations themselves.

The current EU legislative review provides an excellent opportunity to address loopholes and other shortcomings that have become apparent since the adoption of the Accounting Directive and its implementation into national legislation in order to ensure that all data reported is complete, relevant and usable. In particular, clarifying several requirements of the legislation – such as those that set out how and when payments should be reported – will help to make sure that clearer, more harmonised data is reported, strengthening the Directive's original objectives.

As the EC reviews the reports on company payments to governments to date and the effectiveness of the Directive, we believe that a number of details in the Directive should be amended. This will help the legislation to be more effective in future and deliver on its intended objectives.[14]

2. EXECUTIVE SUMMARY

This report assesses project-level payments to governments by oil, gas and mining companies in four different countries of operation: Repsol in Bolivia; Tullow Oil in Equatorial Guinea; Vedanta in India; and a joint venture between Statoil, BP and ENI (with ExxonMobil as an operator) in Angola.

The selected projects were analysed as independent case studies highlighting the value of revenue payment disclosures and illustrating some of the specific opportunities that now exist for external monitoring. The case studies were drafted with the objective of demonstrating the value of the data contained in the reports on payments to government required by the EU Accounting Directive and of assessing to what extent the Directive facilitates transparency and accountability.

Projects were selected to illustrate the contribution of the Directive in terms of expanding transparency in some of the most opaque jurisdictions (non-EITI countries, such as Angola and Equatorial Guinea, where payment transparency depends solely on the EU legislation), and to bring transparency to companies domiciled outside of the EU (such as ExxonMobil). Priority was given to looking at a country's situation where extractive sector revenues held great potential to contribute to wider development outcomes. Project selection was also guided by the availability of good quality project data (including access to project fiscal terms) and good operational data (including production volumes and commodity prices).

Tavan Tolgoi mine in Mongolia / Photo via Wikimedia Commons

BOX 3: Sources for project selection and analysis

- Resourceprojects.org database by the Natural Resource Governance Institute. Projects in exploratory or development phase were excluded from the selection.
- Project-level payments to governments reports published by oil, gas and mining companies between 2013 and 2017, either voluntarily or under the requirements of the EU Accounting Directive.
- Additional publicly available documents, such as project fiscal terms and operational data, including production volumes and commodity prices.

For further details on the methodology used for the development of this publication, see our Methodology Annex.

Based on a preliminary review, 40 projects were assessed in detail to check for the availability of public domain project-level data necessary for revenue data analysis. Ultimately, the four above-mentioned projects were selected.

As shown by our analysis, this game-changing EU legislation has ensured the public availability of information on payments made by extractive companies that are based and listed in the EU to the governments of resource-rich countries. This has significantly improved transparency and accountability in a highly opaque sector.

> However, the report finds areas of concern in companies' reporting and a number of significant weaknesses, both in the legislation itself and in the practice of implementing companies. These weaknesses represent limitations in terms of achieving the overall objective of the adopted transparency and accountability measures, which is to enhance public understanding of extractive companies' activities and payments

3. KEY FINDINGS

Four case studies

BOLIVIA
Repsol

The Madrid based oil and gas company Repsol S.A. is the operator of Bolivia's Margarita-Huacaya natural gas fields. The Spanish company has disclosed its payments to governments under the EU Directive since 2016. The field has two other operating partners, Shell and PAE, of which Shell is a reporting company under the Directive, but does not report joint venture payments when they are not acting as an operator.

EQUATORIAL GUINEA
Tullow Oil

The Irish independent oil company Tullow Oil has operated in Equatorial Guinea since 2004. It holds a 14.25% stake in the Ceiba and Okume oil fields in Block G. Tullow Oil has been reporting its payments to governments since 2013.

ANGOLA
Statoil, BP and ENI

The three European oil companies, Statoil, BP and ENI operate a joint venture in Angolan deepwater block 15. The main operator is American ExxonMobil's subsidiary. The European companies have been reporting under the EU directive between one and three years, while ExxonMobil has reported payments for Block 15 under two different European subsidiaries

INDIA
Vedanta

The London based Vedanta Resources LTD is the largest mining company in India. Its operations are conducted through the subsidiary Hindustan Zinc Limited. After its merger with Cairn Oil and Gas, Vedanta has been significantly involved in the Indian petroleum sector.

IMPLEMENTATION GAPS

a. Companies' interpretation of payment categories differs significantly

- Different interpretations of categories cause inconsistencies in the allocation of payments between reports of different companies, which makes it challenging for citizens to understand what companies have reported under each category of payment.

b. Companies fail to properly report on their payments in kind

- Disclosures of *in-kind payments* often fail to clarify which specific payments have been made in kind, combining different categories of payments under the same heading.
- Reported in-kind payments often lack the relevant value and volume data.

c. Companies misreport on or fail to identify the recipient government entities of their payments

- Company reports are often unclear or do not specify which government entities have received the payments, as required by the Accounting Directive.

LEGISLATIVE GAPS

a. The Accounting Directive does not clarify how companies should report on their joint venture payments

- The lack of guidance and specific requirements in the Accounting Directive have led to limited data when reporting on *joint venture* payments.

b. The Accounting Directive does not require companies to report their tax payments at the project level

- When projects are not *ring-fenced* for tax purposes, companies report corporate income tax payments at the entity level rather than at project level.
- The 'tax' payment category in the Accounting Directive encompasses more than just corporate income tax; this means that companies also aggregate other important types of revenue streams (which could be disaggregated) under the same payment category.

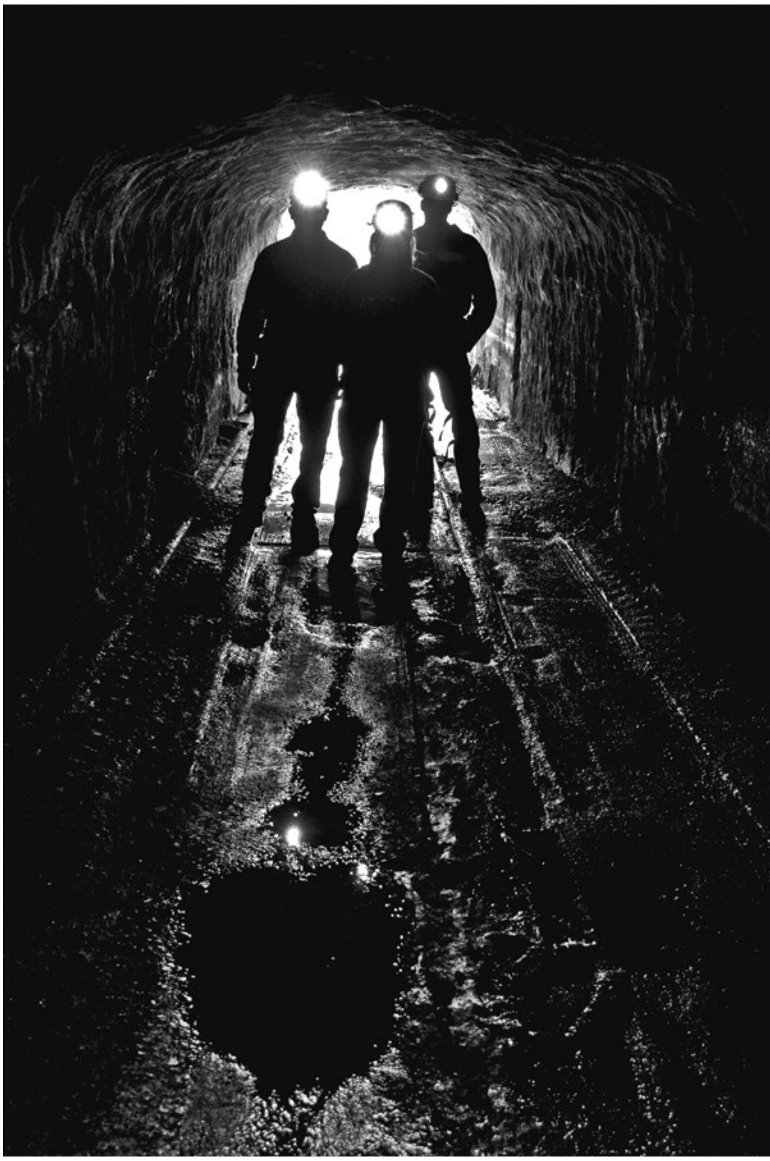
3.1 IMPLEMENTATION GAPS

a. Companies' interpretation of payment categories differs significantly

Our analysis points to an inconsistency between companies' interpretations of categories of payments, which may result in the allocation of similar payments to different categories in their reports. This gap could be filled by requiring companies to explain their interpretation of payment categories in a narrative note to their Payments to Governments (PtG) reports.

The cases of Tullow Oil, Repsol and Vedanta all illustrate the challenges for citizens and data users to understand what companies have reported under royalty payments, making it difficult to determine whether companies have paid their share of royalties and other payments.

In Equatorial Guinea, for example, Tullow Oil does not report royalty payments for its Ceiba and Okume projects, despite paying them in kind and, therefore, reporting them under the production entitlement category. Repsol's report on its Margarita/Huacaya project in Bolivia does not include royalty payments even though the company reports payments that are calculated like royalties under other payment categories.[15] In contrast, Vedanta reports three revenue streams (all of which are calculated like a royalty) under the heading of royalty payments, without referencing this anywhere in its report.



Miners silhouette / Photo via PxHere

b. Companies fail to properly report on their payments in kind

Our research finds that companies' payment-in-kind disclosures fail to clarify which specific payments have been made in kind, or they combine different payment categories under the heading of in-kind payments. These disclosures also often lack value and volume data, as the Accounting Directive requires companies to publish the volume of their in-kind payments only "where applicable". However, this data is necessary for citizens to be able to judge whether each in-kind payment is appropriately valued.

Tullow Oil's reporting on its two projects in Equatorial Guinea shows that the company has chosen to aggregate royalties paid in kind along with government *profit oil* within the category of production entitlement, and not as a separate payment, without clarifying which specific payments have been made in kind. This represents a barrier to improved accountability, as the respective contribution of the two revenue streams is not obvious. Moreover, as the value and volume of the two different revenue streams are not reported independently, it is not possible for citizens to calculate whether each in-kind payment is overvalued or undervalued.

This case also raises questions on commodity valuation and on the company's approach to reporting the value of in-kind payments. In its disclosures, Tullow Oil uses its company-wide average realised sale price to calculate the value of in-kind contributions, which significantly weakens the quality of reports. As oil price varies widely depending on quality, providing the company-wide average realised price represents an impediment to increased revenue transparency. The value and volume data should be project-specific.

In the case of Repsol, the company's interpretation of payment categories has led to a misallocation of its production entitlements to different payment categories in its reporting, in addition to its problematic approach with regard to the reporting of its royalty payments. It was in fact initially unclear, due to a lack of explanation by the company in its report, how Repsol was reporting the government share of *profit gas*, as the only payment designated to the *national oil company* is reported under the category of fees.

c. Companies misreport on or fail to identify the recipient government entities of their payments

Our analysis also highlights discrepancies in how companies have been reporting on the government entities receiving their payments. The Accounting Directive points out that, in order for citizens to hold their governments effectively to account, extractive companies are required to specify the government entities receiving their payments and not just name of the country or only the generic level of government.

For its projects in Equatorial Guinea, for example, Tullow Oil reports that its payments in kind are paid to the "Republic of Equatorial Guinea Ministry of Mines, Industry and Energy" and its tax payments are made to the "Republica De Guinea Ecuatorial Ministerio De Hacienda y Presupuestos" (Ministry of Finance). However, the International Monetary Fund (IMF) reports that the former are made to GEPetrol and the latter to the Central Bank. Transparency International EU does not have any way of independently verifying the two different reports.

3.2 LEGISLATIVE GAPS

a. The Accounting Directive does not set out how companies should report on their joint venture payments

Our report confirms the challenges in analysing *joint venture* (JV) payments due to a lack of clarity and guidance on how to report on them in the Accounting Directive. In fact, it does not specify whether and under what circumstances extractive companies have to disclose these types of payments in their reports.

As shown in our analysis of Angola's Block 15, BP and ENI chose to omit their payments for this project in their reports, as they are not the operators in this JV even though they hold a 26.67 per cent and 20 per cent stake in the project respectively. However, as an industry that relies heavily on JV agreements, this represents a substantial gap in the way these companies are reporting on their payments and is clearly in contravention of the spirit of the law. As a matter of fact, where JV participants appoint an operator to conduct the joint venture's operations on their behalf, they do not cease to have an underlying liability for their proportionate share of the joint venture's payments to government, nor do they stop being responsible for reporting their proportionate share.

Given the frequency of JVs in resource extraction, and because JV production entitlements are often the largest payment to a government, not reporting these payments is likely to leave large sums of money undisclosed.

Gas flare on a extraction field / Photo by Wongaboo via Flickr

b. The Accounting Directive does not require companies to report their tax payments at the project level

Our report highlights the challenges in analysing corporate income tax payments. In the cases of Repsol in Bolivia and Vedanta in India, the companies report their tax payments at the entity level instead of at the project level. Repsol's reported tax payment in Bolivia includes all payments by the subsidiary Repsol YPF E&P Bolivia S.A. and is not broken down for each field. Vedanta's Indian subsidiary Hindustan Zinc Limited also reports its tax payment at the country level rather than at the project level.

The EU Directive recognises that it is often not possible for companies to disaggregate corporate income tax when the payment is made at the entity level. It only requires companies to disclose it at the entity level rather than at the project level.

This makes the analysis of corporate income tax payments very challenging when extractive projects are not *ring-fenced* for tax purposes and where companies have more than one project in a country.

However, the "tax" payment category in the Accounting Directive is a broad category that encompasses more than just corporate income tax. Hence, the legislation also allows companies to aggregate important types of revenue streams, which could be disaggregated, under the same payment category. For instance, withholding taxes, capital gains taxes or resource rent taxes can currently be aggregated and reported under the "tax" payment category. However, this is not how these taxes are paid, as they are paid individually. Each of these types of payments are materially important to governments and must be disaggregated at the project level to allow citizens to hold their governments to account.

4. CONCLUSIONS AND RECOMMENDATIONS

Our research generates new evidence about the activities and payments of leading European extractive companies in resource-rich countries by making use of their first reports on payments to governments as well as the challenges civil society may face when seeking to use the data. This report aims to provide the EC with an assessment of trends by analysing the data from the existing legislation. It also assesses the gaps in both the legislation itself and in the way it is being implemented by extractive companies by highlighting the main difficulties encountered during the data analysis. Consequently, it provides guidance and recommendations to companies on how to improve their reporting.

The new requirements for companies have undoubtedly increased the information available to citizens to help them hold governments and companies to account for public revenue derived from natural resource extraction. Previously these payments were made largely in secret, making it impossible for citizens to scrutinise them and track them into government accounts.

Our research highlights the value of the EU's new revenue transparency rules, in particular in traditionally opaque countries, such as Angola and Equatorial Guinea, which are not part of EITI. The research also demonstrates the value of the EU Directive when it comes to shedding light on companies that are neither headquartered or listed in the EU and are currently not subject to any mandatory disclosure laws in the jurisdictions where they are headquartered, such as ExxonMobil which has two European subsidiaries in Germany and Luxembourg reporting under the Directive's requirements.

However, it also reveals the limits of analysing revenue payments using public domain data as well as the discrepancies in the way companies report. This is particularly evident with regard to the different approaches that companies choose to adopt when reporting on their joint venture payments, the way they report on their royalty payments and payments in kind, as well as the challenges related to the analysis of companies' corporate income tax payments vis-à-vis their other types of tax payments.

Transparency International EU's analysis of case studies has shown a number of significant weaknesses, both in the legislation itself and in the practice of implementing companies. These weaknesses pose limitations to the achievement of the overall objective of enhancing public understanding of extractive companies' activities and payments of the adopted transparency and accountability measures.

Oil well silhouette / Photo via PxHere

Oil extraction platform leaving the coast / Photo via PxHere

Currently the Accounting Directive lacks clarity in several of its definitions and requirements. Through its ongoing first legislative review of the Accounting Directive, the EC has an excellent opportunity to propose selective adjustments to the details of the legislation to ensure it is more effective and better achieves the intended objectives.

Following our analysis, we make the following recommendations to the EC to help close the legislative gaps in the Accounting Directive reflected in the highlighted gaps in the implementation of the legislation by extractive companies, as well as helping to clarify the requirements for Payments to Governments:[16]

Interpretation of payment categories

- Require that companies explain their interpretation of payment categories in a narrative note to their reports on Payments to Governments, consistent with Article 41 (definitions) and Article 43.4 (principle of substance rather than form).
- Provide further guidance to companies on how to categorise and report on different types of payments.

Reporting on payments in kind

- Clarify that whenever a payment in kind is made in the form of oil, gas or another mineral, companies must report both the value and the volume of each payment.
- Clarify that companies must not aggregate cash payments with payments in kind, or several types of payments in kind that relate to different revenue streams or commodities, such as oil and gas.
- Clarify that using company-wide average sale prices to value in-kind payments is insufficient without disaggregated payment-specific value and volume data.

Identification of recipient government entities

- Require companies to improve clarity and consistency regarding payment recipients, stressing that, as well as naming the countries to which payments have been made, companies are also required to state the name of the national or subnational government entity or other government body receiving each of their payments, including departments, agencies or undertakings, such as state-owned enterprises, controlled by those authorities.

Reporting on joint venture payments

- Require companies to include joint venture payments, whether made directly by the company or indirectly via the operator or another entity on the reporting company's behalf, on a proportionate basis in their reports on payments to governments, regardless of whether the company has a controlling or non-controlling interest.

Reporting on tax payments

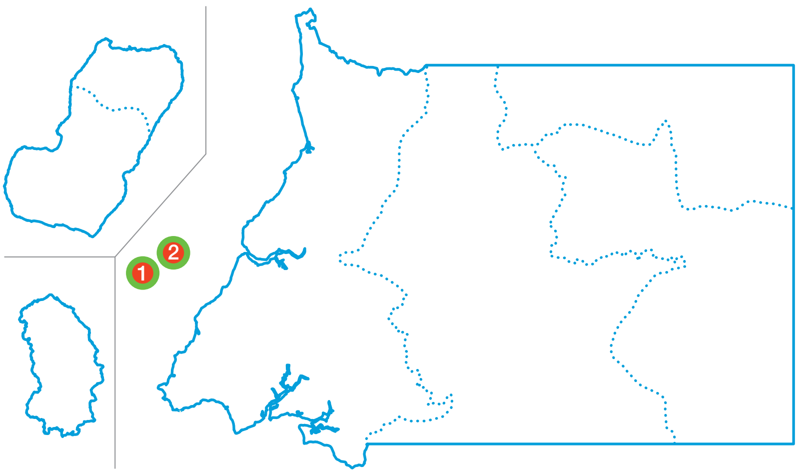
- Require that companies separate corporate income tax (when reported at the entity level) from the other revenue streams reported under the "tax" payment category – such as withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes – and disclose each of the other revenue streams independently at the project level.

PART II

Miner / Photo via PxHere

5. CASE STUDIES OF MULTINATIONAL EXTRACTIVE PAYMENTS

5.1 TULLOW OIL IN EQUATORIAL GUINEA



Oil Fields ① Ceiba Oil Field ② Okume Oil Field

EQUATORIAL GUINEA CEIBA AND OKUME FIELDS

OWNERSHIP STAKES	Tullow Oil (14.25%) Hess (80.75%) - operator GePetrol (5%)

LOCATION OF SITES

Ceiba and Okume oil fields are offshore Equatorial Guinea. They are operated by Hess through the Triton Energy subsidiary.

TRANSPARENCY REQUIREMENTS

Tullow Oil has been voluntarily reporting its payments to governments since 2013 and has disclosed them under the terms of the EU Accounting Directive since 2015. Tullow Oil started its operations in Equatorial Guinea after its acquisition of Energy Africa in 2004.

Tullow Oil plc is an Irish independent oil company that is publicly listed on the London Stock Exchange. Tullow has been a leader in revenue transparency. The company began reporting voluntarily under the terms of Chapter 10 of the EU Accounting Directive for 2013 and 2014.[17] It has disclosed under the requirements of the Directive for 2015 and 2016.[18]

Tullow's disclosures provide an important window into a sector in Equatorial Guinea that is vital to the national economy, but has been plagued with corruption and is notoriously opaque.

Following the company's acquisition of Energy Africa in 2004, Tullow holds a 14.25 per cent stake in the Ceiba and Okume oil fields in Block G in Equatorial Guinea.[19]

Tullow's disclosures on Payments to Government for the two fields are shown in Table 1.

TABLE 1: Tullow Payments to Government 2013-16

	Ceiba PE BBLS	Ceiba PE US$	Okume PE BBLS	Okume PE US$	Tax paid
2016	109,368	6,715,195	366,054	22,475,716	$8,981,655
2015	149,352	10,006,583	346,048	23,185,210	$37,380,751
2014	230,000		521,000		$43,659,000
2013	202,000		508,000		$139,039,000

BBLS = barrels   *PE = production entitlements*

Our analysis of Tullow's Payments to Government for the Ceiba and Okume fields illustrates the challenges for data users of knowing what is being reported as royalties and of disaggregating different revenue streams reported as payments in kind.

Tullow provides production entitlement data broken down by development area, with separate figures for the Ceiba and Okume fields. Data for production entitlements (PE) "includes non-cash royalties and state non-participating interest paid in barrels of oil or gas out of Tullow's working interest share of production in a license".[20] **Royalties paid in kind therefore are not reported independently. Tullow also provides a value for in-kind production entitlements. However, the dollar figure is based on the volume of oil transferred to the government of Equatorial Guinea and the value of Tullow's company-wide average annual realised oil sale price.**[21]

The oil sector in Equatorial Guinea

Equatorial Guinea is the third largest *petroleum* producer in sub-Saharan Africa. It is also one of the most oil-dependent countries in the world. In 2015, the petroleum sector accounted for 85 per cent of the country's Gross Domestic Product (GDP) and 94 per cent of its exports.[22] Following a petroleum boom starting in the mid-1990s, Equatorial Guinea became one of the fastest growing economies in the world. Due to the rapid growth in petroleum revenues, the country has among the highest per capita income in Africa.[23]

In recent years, however, contributions from the petroleum sector have decreased. The fall in oil prices has resulted in significant declines in government revenue and the country's petroleum production has also been in decline. Total production, around 150,000 *barrels of oil equivalent* per day (BOEPD) in 2015, has been falling by about 5 per cent each year for the last 10 years.[24]

Equatorial Guinea represents a classic case of the resource curse, where the rapid onset of petroleum revenues has increased corruption and corroded public institutions. In 2012 and 2013, Equatorial Guinea ranked near the bottom in Transparency International's *Corruption Perceptions Index* (CPI): 163 out of 174 countries in 2012 and out of 177 countries in 2013. In recent years, the country has been left off the index altogether due to a lack of sufficient data. The country was included once again in the 2017 CPI, ranking 171 out of 180 countries.[25] In the *Natural Resources Governance Index*, a global assessment of natural resource governance by the Natural Resource Governance Institute (NRGI), the country ranked 85 out of 89 countries in 2017.[26]

In the early 2000s, both the US Securities and Exchange Commission (SEC) and the US Senate investigated American oil companies including Exxon Mobil Corp., Amerada Hess Corp. and Marathon Oil Corp. for possible corruption in Equatorial Guinea.[27] In late 2017, Teodoro Nguema Obiang Mangue, the Vice-President of Equatorial Guinea and son of the President, was convicted of embezzlement and his assets in France were confiscated.[28]

Equatorial Guinea briefly engaged with the EITI. In 2008, the country achieved EITI candidate status. A single EITI report was published in March 2010, covering the years 2007 and 2008.[29] While the report provided unprecedented insight into the petroleum sector, only aggregate payment data by fiscal instrument was disclosed. However, a request for an extension to the validation process was denied and Equatorial Guinea was delisted from the EITI.[30] Efforts were made in 2015 to re-engage the EITI, but these efforts appear to have stalled.[31]

Block G – Ceiba and Okume

In 1997, Triton Energy signed a *production sharing contract* (PSC) for Blocks G and F in the Rio Muni Basin. In 1999, Triton sold a 15 per cent stake in the project to Energy Africa. Amerada Hess Corporation took over Triton's 85 per cent stake when they purchased Triton Energy in 2001. In 2004, Tullow Oil acquired Energy Africa and its 15 per cent stake in Block G.

As the fields moved to development, the national oil company GEPetrol exercised its right to 5 per cent equity in the project. Costs are covered by the joint venture partners and then repaid out of GEPetrol's share of *cost oil*.[32] These ownership stakes remained in place until the end of 2016.

TABLE 2: Block G Equity Stakes 2013-2016

	Paying interest	Producing interest
Hess (operator)	85%	80.75%
Tullow	15%	14.25%
GEPetrol		5.0%

Oil developments in Block G have centred around two separate fields. In 1999, Triton made its first discovery in the Ceiba field of Block G. Production began in late 2000. Additional exploration led to the discovery of a series of oil fields in the northern area of Block G. These were developed as the Okume Complex, with production beginning in 2006. Together the two fields have produced more than 380 million barrels (BBLS) (from 2000-2016).

View to Mount Cameroon from Equatorial Guinea / Photo by Marat Assanov via Flickr

Block G – Production sharing contract (PSC)

Triton Energy is a public company listed on the New York Stock Exchange (NYSE). In the early 2000s, the company disclosed a series of oil contracts in its filings to investors. These disclosures included the original PSC for Block G (1997) as well as a First Amendment to the PSC (2000).[33]

The original PSC sets out the fiscal terms that determine the payments oil companies make to the government. **According to Block G's PSC, government revenue comes from three main sources: a sliding-scale royalty based on cumulative production; a share of after-cost oil production determined by the project rate-of-return; and a corporate income tax.[34]**

The amended PSC for 2000 included an increase in the royalty rates, the addition of a cost recovery limit and an allocation of after-cost production based on cumulative production volumes. The revised fiscal terms are set out in Table 3.[35]

TABLE 3: Block G Fiscal Terms PSC (1997) and First Amendment (2000)

Royalty	
0-30,000 BBLS	11%
30,000-60,000 BBLS	12%
60,000-80,000 BBLS	14%
80,000-100,000 BBLS	15%
+100,000 BBLS	16%
Allocation of production	
Cost Recovery Limit	70%
Government share of profit oil	
0-200 MMBO	20%
200-350 MMBO	30%
350-450 MMBO	40%
450-550 MMBO	50%
+550 MMBO	60%
Corporate income tax	
	25% of net profits

BBLS = barrels
MMBC = million barrels of oil

Production sharing and corporate income tax analysis

This analysis focuses on the four years of Tullow Oil's reporting for both the Ceiba and Okume fields (2013-2016) and is based on the assumption that the fiscal terms from the First Amendment remain in place.

Production sharing analysis

The production sharing analysis is based on the allocation of production in barrels of oil. **This is possible because the government receives both royalties and profit oil allocations in kind: that is, in oil rather than in cash. According to Tullow Oil's reports on Payments to Government, the production entitlement (PE) includes in-kind payments of both royalties and profit oil.**

Based on our methodology (see Methodology Annex), Table 4 provides our estimates of royalties and profit oil allocations to Equatorial Guinea for the Ceiba and Okume fields for the years 2013-2016. Table 5 shows our estimation of the allocation of 2016 *cost oil* and *profit oil* across the three oil companies: Hess, Tullow and GEPetrol in barrels of oil.

The results appear to show high levels of production allocated to costs. For the Ceiba field, in 2015 and 2016, the volume of after-royalty production allocated to costs is more than 78 per cent. As the PSC includes a *cost recovery* limit of 70 per cent, we assume that something is missing in our analysis. Our review suggests that the discrepancy is not due to a misunderstanding of equity stakes in the project nor the allocation of *profit oil*. One possible explanation is that some costs (e.g. transport) are allowable deductions prior to the assessment of the royalty. If we factor a lower royalty payment into our calculations, we would end up with a higher estimate of government *profit oil* and a corresponding reduction in the percentage of post-royalty production allocated to costs. **The precision of this analysis would be significantly improved if Tullow were to report on royalty and profit oil payments separately.**

TABLE 4: Estimates of royalties and profit oil allocations (barrels)

Ceiba US$

	2016	2015	2014	2013
Production	5,907,368	7,940,351	8,708,772	8,964,912
Royalty	649,811	873,439	957,965	986,140
Cost oil	4,669,137	6,193,684	4,470,456	5,821,754
Government profit oil	117,684	174,646	656,070	431,404
Company profit oil	470,737	698,582	2,624,281	1,725,614

Okume US$

	2016	2015	2014	2013
Production	12,071,579	15,112,281	16,392,982	15,880,702
Royalty	1,338,789	1,703,974	1,857,658	1,796,184
Cost oil	4,582,737	9,786,140	5,542,912	5,240,877
Government profit oil	1,230,011	724,433	1,798,482	1,768,728
Company profit oil	4,920,042	2,897,733	7,193,930	7,074,912

TABLE 5: Estimated allocation of 2016 cost oil and profit oil

US$	Total	Hess 85%	Tullow 15%	GEPetrol
Cost oil	4,669,137	3,968,766	700,371	0
	Total	**Hess 80.75%**	**Tullow 14.25%**	**GEPetrol 5%**
Profit oil	470,737	380,120	67,080	23,537
TOTAL	**5,139,874**	**4,348,886**	**767,451**	**23,537**

Even where costs fall below the annual *cost recovery* limit, the amount of production allocated to costs remains significant. During the period under analysis, both Ceiba and Okume would be considered mature oil fields. There are indications that capital and operating costs for offshore Equatorial Guinea are comparatively high.[36] At the same time, company documents suggest only modest capital investments in 2013 and 2014 and significant reductions during the low oil price environment of 2015 and 2016.[37] High *cost recovery* claims can significantly undermine government revenues.[38] Reports suggest that the government conducts *cost recovery* audits at regular intervals. Nevertheless, IMF reports on the oil sector in Equatorial Guinea have raised questions about the ability of the government to effectively monitor cost claims within the production sharing system.[39]

Corporate tax analysis

Analysing *corporate tax* payments is inherently more challenging than analysing allocations of oil within a production sharing system. First, corporate tax payments are made at the company level and are therefore consolidated across the two development areas. Second, there are differences between the rules for *cost recovery* within the production sharing system and the rules for allowable deductions in the calculation of taxable income.[40] Third, corporate tax is commonly reported under the rules of accrual accounting where the "cash payment of income taxes occurs in the year in which the tax has arisen or up to one year later."[41] Finally, corporate tax paid may involve either cash rebates received or tax reassessments.[42]

There are clear methodological limits to undertaking an analysis of corporate tax payments based on public domain information. To carry out the analysis of Tullow Oil's corporate tax payments, we have used the following data:

- The corporate tax rate that applies to Block G is 25 per cent of net profits. Net profits are calculated as revenues from the sale of oil at realised prices adjusted for tax purposes with eligible additions, such as accounting depreciation and allowable expenses, and eligible deductions, such as operating costs, capital allowances and carried-forward losses.
- However, as we do not have access to this data, we have attempted a rudimentary analysis using the value of Tullow *profit oil* as a proxy for Tullow taxable income. In order to convert oil volumes to revenues, we have used oil price data for Equatorial Guinea provided by the IMF for the years 2013-2015.[43]
- For 2016, we have estimated the oil price by combining the reported price for *brent crude* minus the average discount from previous years. As corporate tax is not field-specific, we have used the data for both fields (see Methodology Annex).

The summary of our estimates for the taxes owing for the Ceiba and Okume development area from 2013-2016 are set out in Table 6 as "Tullow estimated tax liability". Tullow indicates that it reports corporate tax payments in the year these were paid. The tax assessment is completed early in the year following the period during which the tax liability was incurred. This means that Tullow reports the payment of tax related to 2016 in 2017. In Table 6, we identify tax payment with the year in which the liability was incurred rather than the year it was reported. We also show the difference between our estimates and the tax liability associated with Tullow's reporting.

TABLE 6: Tullow estimated tax liability for Ceiba and Okume

US$	2016	2015	2014	2013
Tullow estimated tax liability	7,363,063	6,021,581	32,354,072	31,445,931
Tullow reported tax liability*	21,647,000	8,891,655	37,380,751	43,659,000
Difference	-14,283,937	-2,870,074	-5,026,679	-12,213,069

* As explained above, tax liability for a year is taken from the reported payment for the following year.

Our estimates of Tullow's tax liabilities are consistently lower than Tullow's actual payments. The differences could be the result of the limitations of our methodology. It is also possible that tax payments made in a given year also include the payment of reassessments for previous years. However, there are significant difference showing for each year.[44]

Estimated overall value of payments 2014-2016

By combining the revenue analysis related to the production sharing system and corporate tax payments, it is possible to provide general estimates of the overall value of payments made in kind and in cash from Block G for the years 2014-2016. There are obviously significant declines in government revenue during this period. These are at least partially due to falling oil production and a very significant decline in oil price.

TABLE 7: Block G estimated payments 2014-16

Estimated dollar value (in-kind and in-cash) for Equatorial Guinea			
US$	**2016**	**2015**	**2014**
Royalty	76,242,924	121,138,377	260,445,110
Government profit oil	51,670,616	42,256,711	227,046,118
GEPetrol profit oil	10,334,123	8,451,342	45,409,224
Corporate tax	42,256,711	227,046,118	220,673,197
TOTAL	**180,504,374**	**398,892,548**	**753,573,649**

Conclusions

Tullow Oil has been a leading proponent of revenue transparency. The company began reporting voluntarily under the EU Directive in 2013, two years before mandatory disclosure was required. Tullow also represents best practice in revenue disclosure in terms of reporting at the level of the development area (i.e. separate disclosures for both Ceiba and Okume) and also for reporting its share of *profit oil* even the company is not the project operator.

Tullow chose to report royalties paid in kind along with government profit oil within the category of production entitlement, and not as a separate payment without clarifying which specific payments were made in kind. This is unfortunate, as it means that the respective contribution of the two revenue streams is not obvious. Without disaggregating the two payment categories and without the necessary value and volume data of the two different revenue streams, it is not possible for citizens to calculate whether each in-kind payment is overvalued or undervalued. **Transparency International EU recommends that, where royalties are paid in kind, their volume and value should be reported independently from profit oil paid to the government.**

Tullow's approach to reporting the value of in-kind payments represents a barrier to improved accountability. Within a production sharing system, the value of petroleum is established through the process of *cost recovery*, where the price of a barrel of oil must be established. Alternatively, the company could report the average price realised from the sale of oil from the specific development area or block. In past Annual Reports, Tullow has provided this information.[45] **In Tullow's disclosures under the EU Directive, however, it uses a company-wide average realised sale price to calculate the value of in-kind contributions. As oil price varies widely depending on quality, providing the company-wide average realised price does not increase revenue transparency.**

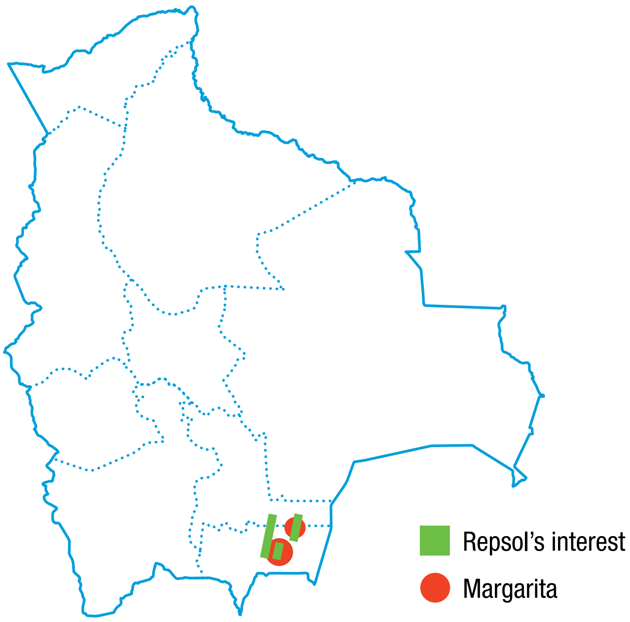
Finally, greater clarity would also be welcome on the payment recipients. Tullow reports that payments in kind are paid to the "Republic of Equatorial Guinea Ministry of Mines, Industry and Energy." However, the IMF reports that in-kind payments are made to GEPetrol. Similarly, Tullow reports that tax payments are made to the "Republica De Guinea Ecuatorial Ministerio De Hacienda y Presupuestos" (Ministry of Finance). However, the IMF reports that tax payments are made directly to the Central Bank.[46] Transparency International EU does not have any way of independently verifying the two reports.

RECOMMENDATIONS

For Tullow Oil:

- In view of its reported production entitlements including both in-kind payments of royalty and *profit oil*, avoid aggregating the two payments and report both the value and the volume for each of them independently.
- Provide project-specific sale price to calculate the value of payments in kind as opposed to their company-wide average realised price.
- Explain its interpretation of payment categories, consistent with the definitions outlined in Article 41 of the EU Accounting Directive and in line with the principle of substance rather than form outlined in Article 43.4.
- Ensure clarity and consistency on payment recipients by stating the name of the national or subnational government entity or other government body receiving each of its payments, including departments, agencies or undertakings controlled by those authorities.

5.2 REPSOL IN BOLIVIA



BOLIVIA MARGARITA / HUACAYA PROJECT

OWNERSHIP STAKES	Repsol- 37.5% BG Bolivia Corporation - 37.5% PAE E&P Bolivia Ltd - 25%

LOCATION OF SITE

The Margarita and Huacaya fields are located in the Caipipendi block, south of Bolivia. The fields are managed by Repsol.

TRANSPARENCY REQUIREMENTS

Repsol S.A. is required to report its payments to governments under the EU Directive. The owner of BG Bolivia is Royal Dutch Shell, which doesn't report its joint venture payments when it is not the operator. Pan American Energy (PAE) does not have similar reporting requirements.

Repsol S.A. is a global energy company based in Madrid, Spain. The company has disclosed payments to governments for 2016 as required by the EU Directives transposed into Spanish law.[47]

Repsol S.A. (through its subsidiary Repsol YPF E&P Bolivia S.A.) holds a 37.5 per cent stake and is the operator in Bolivia's Margarita-Huacaya natural gas fields. The other consortium partners are BG Bolivia Corporation (37.5 per cent) and PAE E&P Bolivia Ltd (25 per cent). Shell is also a reporting company under the EU Directive but it does not report on joint venture payments where it is not the operator.[48]

Table 8 summarises Repsol's payments to the Bolivian government including to the state-owned oil and gas company Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) for Margarita/Huacaya. In addition, the company reported an overall tax payment of €34,800,000. **However, this tax payment includes all payments by the subsidiary Repsol YPF E&P Bolivia S.A. and is not broken down for each field.**

Table 8: Payment Data reported by Repsol for the 2016 fiscal year[49]

Repsol reported payments to Bolivia in 2016 for Margarita (€)		Recipient
Production entitlement	405,000,000	Ministerio de Hidrocarburos y Energía
Fees	1,200,000	Yacimientos Petrolíferos Fiscales Bolivianos (YPFB)
Repsol reported payment to Bolivia in 2016 for all projects (€)		
Taxes	34,800,000	Tributos Fiscales
TOTAL	**461,000,000**	

This case illustrates the challenges for data users to determine whether certain companies have paid their share of royalties and other payments due to the discrepancies between the different interpretations of payment categories. Repsol's interpretation of payment categories has resulted in the allocation of royalty payments and production entitlements to different categories in its report. However, the company has not publicly explained this. The analysis also demonstrates the challenges for data users of separating individual revenue streams included under the tax payment category, which encompasses more than just corporate income tax, e.g. withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes.

Natural gas in Bolivia

Bolivia is a net exporter of natural gas and one of the main producers in South America. Currently, natural gas exports are directed to Brazil and Argentina (both connected by pipelines) under 20-year contracts signed in 1999 and 2006, respectively. Revenues from the natural gas sales are a major contributor to national and local governments.

These revenues have increased since the mid-2000s due to favourable commodity prices and legislation changes concerning hydrocarbon activities.

Natural gas production in the last years has plateaued at 60MMm³d (million cubic metres per day). Nearly 80 per cent of production relies on three fields located in the Tarija department: Sábalo, San Alberto and Margarita/Huacaya.

The Margarita/Huacaya project

The Margarita/Huacaya gas field is part of the Caipipendi block located in the Tarija Basin in Bolivia. Repsol is the operator with a 37.5 per cent stake. The other stakeholders are British Gas (BG) with 37.5 per cent (now Shell), and PanAmerican Energy with 25 per cent (Table 9).

Table 9: Margarita/Huacaya stakeholders and working interest in the project[50]

Margarita/Huacaya stakeholders	
Repsol E&P Bolivia (operator)	37.5%
British Gas (now Shell)	37.5%
PanAmerican Energy	25%

The original Caipipendi contract was signed in 1990, and the early stakeholders were Maxus Bolivia (a subsidiary of Repsol YPF), British Gas and Union Texas of Bolivia. Commercial discoveries were made in 1998 and production began in 2004. The hydrocarbon legislation changes in 2005 and 2006 concerning the oil and gas fiscal terms in Bolivia forced a renegotiation of the contract.

The fiscal terms that govern the Margarita project are set out in the Caipipendi Operation Contract of 2006, which has been publicly disclosed as a matter of government policy.[51] An amendment to the contract, extending the duration for an additional 15 years, was signed in 2016. This document is technically a public document but is not easily accessible.[52] The legislation governing the contract includes the Hydrocarbon Law of 2005 (Law 3058) and the Nationalization Supreme Decree of 2006 (DS 28701).

Despite being called an operation contract, it functions much like a production-sharing system. **The first step is a payment made on the gross value of production. In most jurisdictions, this would be called a royalty.** After the royalty, the company is reimbursed capital and operational expenses (recoverable costs). The production remaining after the payment of the royalty and the recovery of costs is called profit gas and is split between the companies and the national oil company (YPFB). The split is price-sensitive and set on each contract and varies depending on the R-factor[53] (ratio of cumulative earnings over cumulative investments) and the rate of production. Table 10 shows the current taxes and royalties for hydrocarbon activities stipulated in the Bolivian legislation for hydrocarbon activities and the Caipipendi Operation Contract of 2006.

TABLE 10: Summary of the royalties, fees and taxes for upstream hydrocarbon activities in Bolivia given by the current fiscal regime[54]

Royalties and taxes for hydrocarbon production in Bolivia 1996-2005 (general) and 2006-present (for Margarita)		
Period	**1996-2005**	**2006-Present**
Royalties	**18%**	**18%**
Producing department	11%	11%
National treasury share	6%	6%
National compensation	1%	1%
Hydrocarbon production tax	**-**	**32%**
Production sharing		
Cost recovery limit (for Margarita only)	Does not apply	95%
National oil company share	0%	Variable
Other taxes and fees		
Corporate tax	25%	25%
Remittance tax	12.50%	12.50%
Surtax***	25%	0%
Value-added tax****	13%	13%
Transaction tax****	3%	3%
Land use fees	Variable	Variable

*** The taxable base was "extraordinary profits", as defined in each contract
**** Applies to sales in the domestic market only

Analysis

In order to better understand Repsol's 2016 report, we carried out calculations to estimate the gross revenues of Margarita/Huacaya and the share of royalties, taxes and fees paid to the government. The results of these estimates are summarised in Table 11.

TABLE 11: Estimated results of royalties, taxes and fees for Margarita/Huacaya

Royalties, taxes and fees results for Margarita	
Royalties	€146,508,403.2
National production tax	€260,459,383.5
Corporate tax	€36,239,642.0
NOC profit gas share	€1,459,585.7
Land-use fees	€1,203,560.8

Abandoned train vehicles in Bolivia / Photo via PxHere

The sum of the royalties, the hydrocarbon production tax and the NOC profit gas share account for about €408 million, which virtually matches what was reported by Repsol as "production entitlement".[55] The difference in our calculations could be attributed to a difference in the currency exchange and/or to the assumption of the production allocation to the foreign and domestic markets.

Repsol's report designates a €1.2 million payment as "license, rental and entry fees" to the national oil company YPFB. This category should correspond to the land-use fees. The land-use fees per hectare are defined in the hydrocarbon law of 2005 (see Methodology Annex). The definition includes a "conservation of value" that is used to update the fees over time. In our exchange with the company, Repsol provided the updated land-use fees and Caipipendi area (Huacaya area was reduced once it migrated from the exploration to the exploitation phase). The result matches what was reported in this category.[56]

Based on our calculations, corporate tax owing would be around €36.2 million for the whole project. The breakdown accounting for the working interest of Repsol, Shell and PanAmerican is shown in Table 12.

TABLE 12: Corporate tax breakdown according to working interest

Corporate tax breakdown	
Repsol E&P Bolivia	€13,589,865.8
Shell	€13,589,865.8
PanAmerican Energy	€9,059,910.5

Repsol's calculated corporate tax for Margarita is only about a third of the amount reported as "taxes".[57] We consider this amount low comparing it with the magnitude of the Margarita project, in contrast with the other fields where Repsol operates. Nevertheless, Repsol holds about 50 per cent of YPFB Andina (a joint venture with the NOC), a company that is a stakeholder in many other blocks, including the mega-fields of San Alberto and San Antonio. **It is impossible to be precise about Repsol's corporate taxes due to the other projects where Repsol is the operator or participates as a joint venture partner.**

Conclusions

Repsol's report on Payments to Governments indicates that, when the company is the operator, it reports payments for the project as a whole. We assume, therefore, that it is reporting the payments assessed on gross revenue (royalties) as well as the government share of profit gas under the category of "production entitlement".

Our analysis shows three main issues in Repsol's reporting:

First, Repsol does not include a payment category specific to royalties. It indicates that a royalty payment would be included under "other" and then indicates, "no dividends or royalties were paid to governments during the year". This may be a translation error between Repsol's English and Spanish reports, as "royalty" can also be translated as payment to the government for the use of a particular asset.[58] **Our estimates highlight that more than €400 million was paid in 2016 in taxes assessed against gross project revenue for the Margarita project. As these are payments made for the right to extract oil and gas resources, we believe that these should be reported as royalty payments.**

Second, it was initially unclear how Repsol was reporting the government share of profit gas. We would expect profit gas to be reported under "production entitlement" and that the payment would be made to the national oil company (YPFB). Repsol confirmed that profit gas was reported as production entitlement. However, all production entitlement payments are listed as paid to the Ministry of Hydrocarbons and Energy and not to the YPFB.

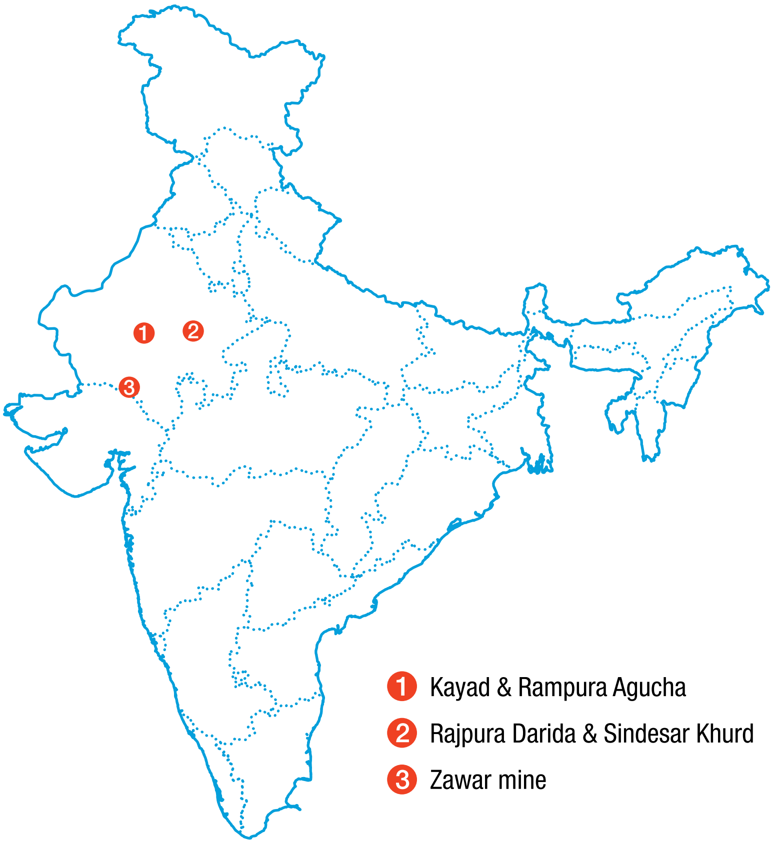
Third, Repsol only reports an overall tax payment of €34,800,000. **This tax payment includes all payments by the subsidiary Repsol YPF E&P Bolivia S.A. and is not broken down for each field.** Although extractive-specific revenue flows are typically levied by project, corporate income tax is often levied at the entity level. There are exceptions to this rule, as some countries ring-fence financial accounts by certain activities or operations, and in such cases general taxes tend to be levied by project. The EU Directive recognises that such payments may be disclosed at entity level without artificially assigning them to particular projects.[59] However, the "tax" payment category[60] to be reported under the EU Directive's requirements is a very broad category that does not only include corporate income tax, but also includes additional types of taxes, such as withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes. These revenue streams may be disclosed individually at the project level to enhance revenue transparency.

RECOMMENDATIONS

For Repsol:

- Explain its interpretation of payment categories, in particular regarding its royalty payments and production entitlements, consistent with the definitions outlined in Article 41 of the EU Accounting Directive and in line with the principle of substance rather than form outlined in Article 43.4.
- Separate corporate income tax (reported at the entity level) from the other revenue streams reported under the "tax" payment category – such as withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes – and disclose each of the other revenue streams independently at the project level to increase revenue transparency.

5.3 VEDANTA IN INDIA



INDIA RAMPURA AGUCHA PROJECT

OPERATIONS IN	Five mines in Zawar, Rajpura Dariba, Sindesar Khurd, Rampura Agucha and Kayad

LOCATION OF SITES

Mines operated by Vedanta subsidiary Hindustan Zinc Limited are located in the state of Rajasthan.

TRANSPARENCY REQUIREMENTS

The UK based Vedanta is listed on the London Stock Exchange. It has submitted two reports on its payments to governments in 2015 and 2016. The company has reported royalties and corporate income tax payments on its activities in five mines.

Vedanta Resources plc is a global metals and mining company with its headquarters in London, United Kingdom and is listed on the London Stock Exchange. Vedanta is the largest mining company in India. Since its merger with Cairn Oil and Gas, Vedanta has significant petroleum in India as well. Overseas, Vedanta has major mining operations in Australia and Zambia.

This analysis focuses on Vedanta's largest mining operations in India, conducted through its subsidiary Hindustan Zinc Limited (HZL). Particular attention will be given to the Rampura Agucha mine, one of the largest zinc mines in the world.

Vedanta has submitted two reports on Payments to Governments that are available to the public, covering financial years 2015 and 2016.[61] The company reports royalty payments from five mines. They also report corporate income tax payments. The payment data included in these reports are presented in Table 13.

TABLE 13: Payment data for 2015-2016 and 2016-2017

US$ millions	2015/16	2016/17
Mine-level royalty payments		
Zawar Mine	13.73	24.90
Rajpura Dariba Mine	7.66	13.32
Sindesar Khurd Mine	40.89	76.53
Rampura Agucha Mine	112.45	194.36
Kayad Mine	-	23.91
Hindustan Zinc Limited Payments		
Corporate income tax (aggregated at the country level)	355,006,229	1,026,972,884
Fees	17,027	-

This case shows the challenges of knowing what Vedanta reports under the royalty payment category, as three revenue streams (all of which are calculated as a royalty) are included under the same "royalty" heading. It also illustrates the current gaps in the analysis of payments to governments due to limited availability of public domain data. Finally, it demonstrates the impossibility for data users of separating individual revenue streams included under the tax payment category, which encompasses more than just corporate income tax, e.g. withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes.

India's mining sector

India produces 95 minerals, which are primarily produced by small operators (1,899 mines reported production in 2016-2017).[62] The mining and quarrying sector contributed to 3 per cent of the country's Gross Value Added in the first quarter of 2016-2017.[63] Mineral production in Rajasthan (where Rampura Agucha is located) accounted for 12.29 per cent of the country's production – the second largest following offshore production.[64]

India's zinc production is the fifth highest in the world, contributing 5.7 per cent of global production.[65] Zinc and lead concentrates, as well as ores, are produced in Rajasthan from eight mines operated by private sector companies.[66] In 2015-2016, 1,045 tonnes of lead and zinc ores were produced, an overall increase of 12 per cent compared to the previous year.[67] India is able to meet its domestic demand for zinc as well as export demand.[68] China is the primary importer of Indian zinc ores and concentrates.[69] Exports of zinc ores and concentrates were 558 tonnes in 2015-2016, up from 41 tonnes the previous year.[70]

Indian state governments are the owners of minerals within their boundaries;[71] for minor minerals, they may grant concessions and raise royalties and levies. The central government must be consulted for coal, lignite and atomic minerals, and retains the power "of revision, fixation of royalty etc. in respect of major minerals", including zinc.[72] The amended Mines and Mineral Development and Regulation Act (MMDRA) introduced District Mineral Foundations, controlled by state governments, "to work for the interest and benefit of persons, and areas affected by mining-related operations, which is to be funded out of the contributions received from holders of mining lease".[73] The contribution is 30 per cent of the royalty for leases granted prior to 2015 and 10 per cent of the royalty for leases granted after 2015.

In spite of the scale of the mineral sector in India, transparency and accountability for revenues remain underdeveloped.[74] India is not part of the EITI and the government does not publish project-level data on payments from mining companies.

BOX 4: Indian District Mineral Foundations

District Mineral Foundations (DMFs) are independent trusts set up by the government under a 2015 programme called the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY, or Prime Minister's Development Programme for Mining-Affected Regions).

The foundations manage a trust fund created from a levy on mining companies. Those mining major minerals (such as copper, tungsten and coal) must pay an amount equivalent to 30 per cent of the royalty of a mine leased before 2015 towards the fund; all mines leased after 2015, as well as those extracting minor minerals (such as marble and granite), must pay 10 per cent of the royalty.

Up to 40 per cent of PMKKKY funds can be used for physical infrastructure such as roads and bridges, irrigation projects, power supply and watershed development. The remaining 60 per cent or so are to be used for social development purposes such as: education; the environment and pollution control measures; healthcare; drinking water supply; welfare of women, children, the elderly and those with disabilities; skill development; and sanitation.

DMFs comprise two committees, the makeup of which is decided by the state government. In consultation with other government departments such as public works, water and education, these committees decide which areas and people are categorised as mining-affected. They also allocate the funds, approve projects and monitor their implementation.[75]

Rampura Agucha Mine

Hindustan Zinc Limited (HZL) is responsible for Vedanta's largest mining interests in India and is the world's second-largest zinc producer (after Glencore).[76] In 2015-2016, HZL was India's only producer of primary lead and zinc,[77] and the only producer involved in mining and smelting.[78]

HZL is a subsidiary of Vedanta Limited (previously known as Sesa Sterlite Limited), itself a subsidiary of Vedanta Resources plc. HZL was originally a state-owned enterprise. The government began to divest in 2002, and through a sequence of purchases, Sterlite Opportunities and Ventures Limited (part of Vedanta Resources) secured a 64.9 per cent stake in the company. Sterlite was renamed Vedanta Limited in April 2015.

One of the mines HZL operates in is Rampura Agucha, one of the world's largest zinc-lead mines located north of Udaipur in Rajasthan. Commissioned in 1991, Rampura Agucha is a combination of opencast mine and underground mine of lead and zinc. It has plans to move to underground mining only post 2020 as the opencast mine comes to an end of life within the next year.[79] It has an annual production capacity of 6.15 million tonnes of lead-zinc ore.

Analysis of Hindustan Zinc's payments

The analysis below focuses only on HZL's royalty payments consolidated for all of its mines in India and specifically for its Rampura Agucha project.

The first two steps in the analysis are:

a. researching the fiscal terms that apply to the project

b. estimating the overall value of production, only possible with data on the volume of production as well as the relevant commodity prices.

Mining fiscal terms

The fiscal terms that govern the mining sector in India are set out in legislation and regulations.

Royalties in India's mining sector are assessed as a percentage of the market value of the commodity produced (*ad valorem*). The rates are set out in the MMDRA as revised in 2015.[80]

BOX 5: Royalty rates

Royalty rates as related to Hindustan Zinc Limited	
Commodity	Rates
Zinc	(a) 9.5% of London Metal Exchange Zinc metal price on *ad valorem* basis chargeable on contained zinc metal in ore produced. (b) 10% of London Metal Exchange Zinc metal price on *ad valorem* basis chargeable on contained zinc metal in concentrate produced.
Lead	(a) 8.5% of London Metal Exchange lead metal price chargeable on the contained lead metal in ore produced. (b) 14.5% of London Metal Exchange lead metal price chargeable on the contained lead metal in the concentrate produced.
Silver	(a) By-product: 7% of London Metal Exchange Price chargeable on by-product silver metal actually produced. (b) Primary Silver: 5% of London Metal Exchange silver metal price chargeable on the contained silver metal in ore produced.

Production and price data

HZL provides detailed production statistics in its annual reports. Consolidated mineral production from across its lead-zinc mines in 2015-2016 is provided in Table 14.[81]

TABLE 14: Combined production data for Hindustan Zinc Limited Mines

Mined data (saleable tonnes)	2015	2016
Zinc	744,271	755,964
Lead	144,653	151,020
Silver	459	480

Production statistics for the Rampura Agucha mine for zinc and lead are provided in Table 15.[82] However, HZL does not provide data for silver production broken down by mine, so an estimate has been made based on reserve grades and contribution per cent by property.

TABLE 15: Mineral production of the Rampura Agucha Mine

Mined data (saleable tonnes)	2015	2016
Zinc	510,100	483,000
Lead	55,200	45,000
Silver	213.73*	223.51*

* Estimate based on reserve grades and contribution per cent by property.

As indicated above, royalties are assessed based on prices as set out at the London Metal Exchange. In the midst of a general slump and slow recovery of commodity prices, zinc and lead have seen strong, sustained price increases in recent years. Our analysis is based on average annual prices, which can be expected to reduce the accuracy of the analysis (see Methodology Annex).

Combining production volumes for the three minerals (zinc, lead and silver) with average annual commodity prices allowed us to estimate mineral revenues. Applying the mineral-specific royalty rate (see Box 5: Royalty rates) resulted in an estimated royalty, which we have then compared with the royalty payments as reported.

Mine in India / Photo by abcdz2000 via Flickr

TABLE 16: Comparing calculated vs reported royalty payments – Consolidated

Royalties (US$)	2015	2016
Calculated royalty	189.72	242.21
Vedanta reported royalty	174.73	333.02
Difference	**-14.99**	**-90.81**

TABLE 17: Comparing calculated vs reported royalty payments – Rampura Agucha

Royalties (US$)	2015	2016
Calculated royalty	115.34	136.62
Vedanta reported royalty	112.45	194.36
Difference	**-2.89**	**-57.74**

In terms of corporate income tax, mining attracts corporate taxes under the Income Tax Act of 1961. The corporate tax rate for domestic companies is 30 per cent in India.[83]

HZL's reported corporate tax payments are very substantial: $355 million in 2015 and just over $1 billion in 2016.

Unlike royalties, however, the company reports corporate tax at the entity level rather than at the project level. This is because HZL operates a diverse set of businesses beyond mining, including operating smelters and electrical power generation. Corporate tax is assessed on net income across all of these businesses. As a result, it is not possible to isolate the corporate tax payments that relate to zinc mining generally or Rampura Agucha in particular.

Vedanta's explanations

As shown in Tables 16 and 17, there are significant differences between our calculated royalty payments and those disclosed by Vedanta in its payments to governments reports.

We wrote to Vedanta in order to seek clarification on these discrepancies. Vedanta provided detailed explanations for the consolidated royalty payments made by the five mines for the year 2016-17, highlighting three main issues.[84]

i. District Mineral Foundation and NMET Payments

Vedanta noted that the company consolidates three revenue payments under the heading of "royalties": the royalty payment as described above; payments to the District Mineral Foundation (DMF) and payments to the National Mining Exploration Trust (NMET).

In 2015, the government amended the MMDRA of 1957. The amendment included the requirement for an additional payment to the DMF Trust and the NMET. These two payments are based on the same logic as royalty calculations with the DMF assessed at an amount equivalent to 30 per cent of the royalty payment and the NMET at an amount equivalent to 2 per cent of the royalty payment. These changes were intended to come into effect at the start of 2015, but a Supreme Court ruling pushed the effective date back to later in 2015.[85]

Vedanta indicates that, in the year 2016-17, the combined DMF and NMET payments amounted to $70.62 million.

ii. Discrepancies in the timing of royalty payments and volume of ore produced

Vedanta indicated that, at the request of the government, royalties are paid in advance. This often results in an overpayment that is adjusted in the following year. For 2016-17, Vedanta indicates that advanced royalty payments resulted in the payment of an additional $11.7 million. Furthermore, Vedanta indicated that additional mineral production due to transportation from one mine to another resulted in an additional royalty payment of $3.22 million.

iii. Discrepancies in mineral prices

HZL royalties are calculated and paid on the basis of the monthly average London Metals Exchange (LME) price. Vedanta indicated that production was higher in the second half of the year when LME prices were increasing. They suggest that the weighted LME price was therefore higher by $102 for zinc and $66 for lead. Together this would result in additional royalty payments of $8.25 million.

Conclusions

According to our calculations (see Table 16), the royalty payment owing from the five mines operated by HZL for 2016-17 is just over $242 million.

Taking into account Vedanta's response, we should add:

- the amount paid for DMF and NMET ($70.62 million)
- the additional royalty paid in advance ($11.7 million)
- the additional amount owing due to additional production from another mine ($3.22 million)
- an amount to take into account higher prices in the second half of the year ($8.25 million).

Adding these additional payments, our calculated royalty payment totals $336 million, within 1 per cent of the $333 million reported.

Mine shaft / Photo via 4K pics

We do not have a way to independently verify Vedanta's explanations.

However, this case once again illustrates the challenges of knowing what is being reported under royalties. The main difference between our calculated royalty and Vedanta's reported royalty (the amount paid for DMF and NMET) should be referenced in a "notes" section associated with the company's report on payments to governments.

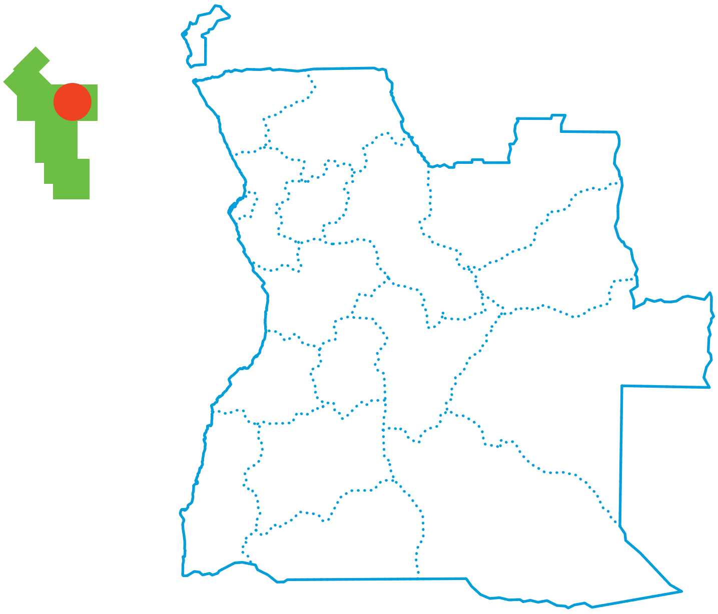
Nevertheless, the other differences show the limits of the methodology for analysing Payments to Governments by using public domain data (i.e. overpayment of advances, royalty paid on additional production, working from average annual commodity prices).

RECOMMENDATIONS

For Vedanta:

- Explain its interpretation of payment categories, in particular with regard to its royalty payments, consistent with the definitions outlined in Article 41 of the EU Accounting Directive and in line with the principle of substance rather than form outlined in Article 43.4.
- Explain how its reported royalty payments are calculated in the narrative section of its Payments to Governments report.
- Separate corporate income tax (reported at the entity level) from the other revenue streams reported under the "tax" payment category – such as withholding taxes on dividends, interest and royalties, capital gains taxes or resource rent taxes – and disclose each of the other revenue streams independently at the project level to increase revenue transparency.

5.4 STATOIL, BP AND ENI JOINT VENTURE IN ANGOLA



ExxonMobil's interest   Angola deepwater block 15

ANGOLA DEEPWATER BLOCK 15

OWNERSHIP STAKES	ExxonMobil - 40%
	BP - 26.67%
	Eni - 20%
	Statoil - 13.33%

LOCATION OF SITE

Deepwater block 15 is part of Kizomba field outside the coast of Angola. The operation rights of the field are owned by ExxonMobil.

TRANSPARENCY REQUIREMENTS

Statoil, BP and Eni are required to report their payments to governments under the EU Directive. Although a US-based company, ExxonMobil has reported payments for Block 15 under two different European subsidiaries.

The rights to Angola's deepwater oil blocks are held by major international oil companies operating in joint ventures. Block 15, one of the most productive blocks, has been operated by Esso Exploration Angola (Block 15) Limited, a subsidiary of US-based ExxonMobil, since 1994. The other joint venture partners include BP, ENI and Statoil.

All four joint venture partners disclose payments to government under the EU Directive. Although it is a US-based company, ExxonMobil has reported payments for Block 15 Angola in 2016 under two different European subsidiaries: one based in Germany (ExxonMobil Central Europe Holding GmbH) and another based in Luxembourg (ExxonMobil Luxembourg et Cie).

Statoil[86] has reported under the equivalent Norwegian transparency legislation[87] for three years (2014-2016); BP has reported under the EU Accounting Directive for two years (2015-2016); while ENI has reported for only one year (2016).

All the companies report on corporate tax payments made for Block 15. As the operator, Exxon reports the volume and estimated value of production entitlements. **Although not the operator, Statoil also discloses the volume and estimated value of its share of the production entitlement from Block 15.**

The relevant payment data is set out in Table 18 below. Statoil payments in 2014 and 2015 are reported in Norwegian Kroner.[88] ENI payments in 2016 are reported in Euro.[89] Both have been converted into US$ for the purposes of this report. This analysis below is based primarily on Statoil data, as it is the most comprehensive.

TABLE 18: Payments to Government data - Block 15 Angola (US$ millions)

	Taxes	Production entitlement (MMBO)	Production entitlement (value)
	Statoil Payments to Government Data – Block 15 Angola (US$ millions)		
2016 (US$)	44.5	5.8	238.2
2015 Kroner	1,010.6	7.0	2,694.7
2015 US$ conversion	*125.1*	*7.0*	*333.7*
2014 Kroner	743.0	14.0	9,187.5
2014 US$ conversion	*117.9*	*14.0*	*1,457.50*
	BP Payments to Government data - Block 15 Angola (US$ millions)		
2016	111.9		
2015	118.6		
	Exxon Payments to Government data - Block 15 Angola (US$ millions)		
2016	162.7	43.9	1,883.08
	ENI Payments to Government data - Block 15 Angola (€ millions)		
2016	63.3		
2016 US$ conversion	*69.6*		

> This case best illustrates how the new EU rules on payments to governments by extractives companies have brought an unprecedented level of revenue transparency to citizens in a highly opaque environment. Moreover, it illustrates how, in a joint venture agreement, multiple joint venture partners can bring a degree of transparency to the other partners. This is the case with Statoil, which provides additional data compared to its joint venture partners.

However, it also highlights the challenges in analysing joint venture payments. As the EU Accounting Directive does not specify whether and under what circumstances extractive companies have to disclose joint venture payments in their reports, several companies, such as BP and ENI – as demonstrated in our analysis – omit payments in their reports when they are not the operator. However, as an industry that relies heavily on joint venture agreements, this represents a substantial gap in the way companies report their payments and is clearly in contravention of the spirit of the law. In fact, where joint venture participants appoint an operator to conduct the joint venture's operations on their behalf, they do not cease to have an underlying liability for their proportionate share of the joint venture's payments to government or to be responsible for reporting their proportionate share.

The petroleum sector in Angola

Angola is one of the largest oil-producing countries in Africa. It is estimated that Angola has proven oil reserves of 9.5 billion barrels and 11 trillion cubic feet of natural gas.

In recent years, the country has overtaken Nigeria with production around 1.8 million barrels of oil per day.[90]

Petroleum production has been the driver of Angola's rapid economic growth.[91] From 2002-2008, the country managed to sustain an annual growth rate of around 15 per cent. Growth recovered following the global financial crisis with oil production exceeding 2 million barrels of oil per day in 2010. However, the slump in oil prices since 2014 has resulted in a halt to economic growth, a massive reduction in government revenues, limited availability of foreign exchange and a significant increase in the rate of inflation.

Angola deepwater Block 15

Block 15 is a deepwater block located 120 km offshore of Angola in the Lower Congo Basin. Esso Exploration Angola (now a subsidiary of ExxonMobil) secured the rights to this Block through a production sharing agreement in 1994. Oil was first discovered in 1999 with production from the Kizomba field beginning in 2003. Four new development areas have come on stream in the intervening years, making Block 15 the largest overall producing oil *concession* in the country. By 2016, the Block had generated more than two billion barrels of oil.

The respective ownership stakes in the Block, stable from the onset of the project, are shown in Table 19.

TABLE 19: Block 15 equity stakes

ExxonMobil	40%
BP	26.67%
Eni	20%
Statoil	13.33%

Analysis of Block 15 payments to government

The fiscal terms that govern the project are set out in a production sharing agreement (PSA) signed in 1994 between Esso Exploration Angola and Sonangol acting as the concessionaire. As is the case with most Angolan blocks, the contract remains confidential. While the precise terms are not in the public domain, the PSA is based on the Deepwater Model PSA published in 1992.

As with the other deepwater PSAs from this period, the contract provides two main sources of government revenue: a share of production after costs have been recovered; and an income tax paid on the company's share of profit oil. Each individual oil Block is ring-fenced for both payments of corporate tax. Production sharing allocations are calculated individually for each development area.

Block 15 fiscal terms

While the production sharing contract for Block 15 is not in the public domain, a close approximation is possible based on several public domain sources. Angola's deepwater production sharing contracts are designed to generate two main types of government revenue.

First, the government secures a share of oil produced in the Block after costs have been recovered. Angola deepwater PSCs allow a substantial 50 per cent uplift on capital expenditures, although no more than 50 per cent of overall production can be allocated to costs in one year. The remaining profit oil is divided between company and government based on a sliding scale according to the rate of return generated by each development area.

Finally, a corporate tax of 50 per cent is imposed on the value of the profit oil allocations assigned to the international oil companies.

A summary of the deepwater terms is provided in Table 20.[92]

TABLE 20: Angola deepwater fiscal terms

Cost oil	
Capital uplift	50%
Cost recovery limit	50%
Profit oil	
Rate of return	**Government share**
<15	30%
15-20%	40%
20-30%	75%
30-40%	85%
>40%	90%
Corporate tax (IRP)	
IOC profit oil	50%

Project-level data – Production, price and profit oil

Project-level data is available from several sources. Statoil discloses its share of overall production. For 2014 and 2015, Statoil also publishes its net entitlement (share of both cost oil and profit oil).

In contrast to most other oil-producing countries, the government also provides an unusual amount of project-level data:

- Sonangol, the national oil company, represents the government in the production sharing contracts, and in some Blocks also holds an equity stake. Sonangol publishes production and profit oil volumes for each producing Block.[93]
- Angola's Ministry of Finance also publishes Block-level information including: export volumes, the market price for oil, the value of government profit oil, and the value of combined oil company corporate tax payments.[94]

The published data is shown in Table 21.

Oil rig entering Cape Town harbor / Photo by Clyde Thomas via Unsplash

TABLE 21: Available project-level data

PRODUCTION

Million barrels	2016	2015	2014
Statoil (Calculated for Block production)	115.6	114.5	119.4
Sonangol (Block production)	115.4	114.5	119.5
Ministry of Finance (Block exports)	114.0	113.8	119.9

OIL PRICE

$/BBLS	2016	2015	2014
Statoil (Calculated from PtG Report – Block 15)	41.07	47.66	104.1
Exxon (Calculated from PtG Report – Block 15)	42.80		
Ministry of Finance (Reported market price)	40.80	51.29	101.25
Brent (Not adjusted for Block 15)	43.55	52.35	99.03

GOVERNMENT PROFIT OIL

Million Barrels	2016	2015	2014
Statoil (Increased to Block level)	43.5	52.5	105.0
Exxon (Report for Block)	43.9		
Sonangol (Reported for Block)	43.9	53.9	64.0
Ministry of Finance (Calculated)[95]	42.8	50.5	68.3

CORPORATE TAX PAYMENTS[96]

US$ Millions	2016	2015	2014
Statoil (Increased to Block level)	333.8	938.7	884.3
BP (Increased to Block level)	419.6	444.7	
Exxon (Increased to Block level)	406.5		
ENI (Increased to Block level)	348.0		
Ministry of Finance (Reported for Block)	351.0	432.3	1,009.5

Estimated payments to government from Block 15

Based on our analysis (see Methodology Annex), we generate estimated payments to government of both profit oil and corporate tax for each of the equity partners.

Our analysis is two-fold: the first is based on Statoil's data "grossed-up" to the Block level; and the second is a comparative analysis from government data (mostly Sonangol data supplemented where appropriate from Ministry of Finance data).

The analysis is limited to 2015 and 2016 using both company and government data (for 2014 there was a wide divergence between data provided by Statoil and data provided by the government). Government data reports around 65 million barrels of profit oil from the Block, while Statoil data (increased to the Block level) would be more than 105 million barrels (see Government Profit Oil table of year 2014). Furthermore, Statoil tax payment data from 2015 seemed unusually high.[97] As the tax payment is an integral part of our methodology, for that one year, we made use of data provided by BP instead.

TABLE 22: 2016 estimated payments to government – Block 15

2016 (US$ millions)	Statoil	BP	ENI	EXXON	TOTAL
Company calculations					
- Profit oil	238.2	476.6	357.4	714.8	1,787.0
- Corporate tax (IRP)	44.5	89.0	66.8	133.5	333.8
TOTAL	**282.7**	**565.6**	**424.2**	**848.3**	**2,120.8**
Government calculations					
- Profit oil	238.7	477.6	358.1	716.3	1,790.7
- Corporate tax (IRP)	46.8	93.6	70.2	140.4	351.0
TOTAL	**285.5**	**571.2**	**428.3**	**856.7**	**2,141.6**

Table 23: 2015 estimated payments to government – Block 15

2015 (US$ millions)	Statoil	BP	ENI	EXXON	TOTAL
Company calculations					
- Profit oil	333.6	667.5	500.6	1001.1	2,502.8
- Corporate tax (IRP)	59.3	118.6	88.9	177.9	444.7
TOTAL	**392.9**	**786.1**	**589.5**	**1,179.0**	**2,947.5**
Government calculations					
- Profit Oil	368.2	736.7	552.4	1,104.9	2,762.2
- Corporate Tax (IRP)	57.6	115.3	86.5	172.9	432.3
TOTAL	**425.8**	**852.0**	**638.9**	**1,277.8**	**3,194.5**

Conclusions

In its 2015 Payments to Governments (PtG) report, Statoil states that it discloses host government entitlements also when payments are made via the operator, as these often constitute the most significant payment to governments and are not always transparent to civil society.[98] Angola Block 15 provides an excellent example of this, with more than 80 per cent of government revenue coming from the government's share of profit oil.

This case illustrates the challenges in analysing joint venture payments. As the EU Accounting Directive does not specify whether and under what circumstances extractive companies have to disclose joint venture payments in their reports, several companies – such as BP and ENI, as shown in our analysis – omit payments in their reports when they are not the operator.

However, as an industry that relies heavily on joint venture agreements, this represents a substantial gap in the way companies report their payments and is clearly in contravention of the spirit of the law. In fact, where joint venture participants appoint an operator to conduct these operations on their behalf, they do not cease to have an underlying liability for their proportionate share of the joint venture's payments to government, nor do they stop being responsible for reporting their proportionate share. BP and ENI should be encouraged to follow Statoil's example and report their respective share of profit oil to the government as a production entitlement.

In 2016, all four joint venture partners reported corporate tax payments for Block 15. In 2015, both

Statoil and BP reported these payments. Corporate tax is frequently challenging to analyse as it is often paid at the entity level rather than at the project level. **In Angola, however, each Block is ring-fenced, meaning that the corporate tax payment corresponds to the specific Block. Analysis of corporate tax, in this case, benefits from the calculation approach where profit oil from each of the international oil companies is taxed at 50 per cent.**

Even under these relatively favourable reporting circumstances, corporate tax payments do not neatly correspond to the equity stakes of the reporting joint venture partners. This is probably due to a number of factors: accrual accounting principles; the likelihood of payments being made in one year for taxes owed from the previous year; and the possibility of tax reassessments.

RECOMMENDATIONS

For BP and ENI:

- Disclose their respective share of production entitlements to the government of Angola.
- Include joint venture payments in their Payments to Governments reports whether made directly by them, indirectly via the operator or by another entity on their behalf, on a proportionate basis, regardless of whether they have a controlling or non-controlling interest.

ENDNOTES

1 The definitions have been adapted from Natural Resource Governance Institute (NRGI), *Natural Resource Governance Glossary*, https://resourcegovernance.org/sites/default/files/documents/natural-resource-governance-glossary.pdf, 2017; and *Open Oil, Oil contracts: how to read and understand them*, 2012, http://openoil.net/wp/wp-content/uploads/2013/11/oil-contracts-v1.2-dec-13.pdf. Terms defined in the Glossary appear in italics on first mention in the text.

2 Chapter 10 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council repealing Council Directives 78/660/EEC and 83/349/EEC (hereafter, the "Accounting Directive"): http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN.

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TRANSPARENCY INTERNATIONAL EU

Rue de l'Industrie 10
1000 Brussels, Belgium

brussels@transparency.org
www.transparency.eu

Twitter.com/TI_EU