

Are you ready?

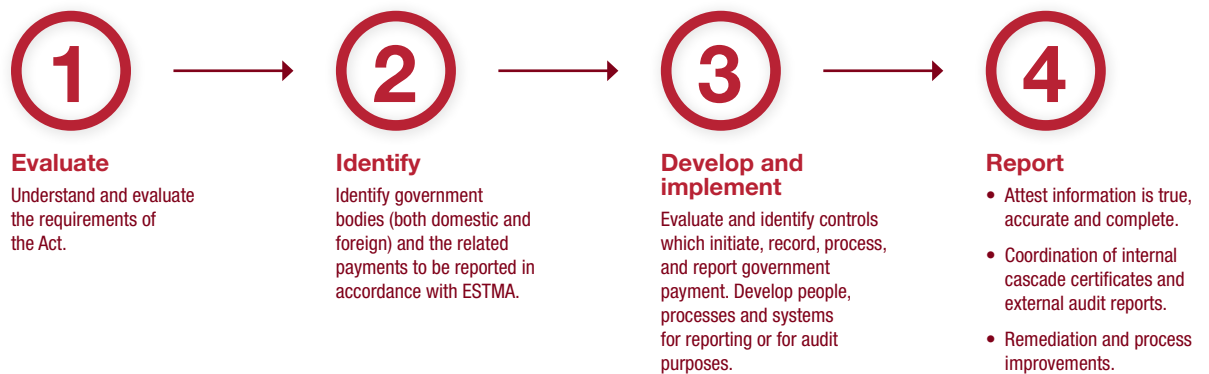
The Extractive Sector Transparency Measures Act

The Extractive Sector Transparency Measures Act (ESTMA) applies to payments made by oil and gas, and mining companies (both public and private) to foreign and domestic governments at all levels. This will eventually include Aboriginal groups. ESTMA is not restricted to Canadian headquartered companies, as foreign companies can be impacted if they have a place of business, do business, or have assets in Canada that meet certain size thresholds.

The Act implements Canada's international commitments to participate in the fight against corruption through measures applicable to the extractive sector. The Act became effective on June 1, 2015 and is effective for all financial year-ends beginning after this date. The first report will need to be delivered by November 27, 2016 for payments made for a June 30, 2016 fiscal year-end. There is an additional two year transition period for payments to Aboriginal entities. Payments to Aboriginal entities will only need to be reported for year-ends starting after June 1, 2017.

4 steps to get ready for ESTMA

Key steps to consider to ensure your entity is ready to prepare an accurate and complete report for the first year:



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What are you required to report?

The reporting requirement applies to any type of entity (a corporation or a trust, partnership or other unincorporated organization) that is engaged in the commercial development (e.g. exploration, extraction or acquisition of rights) of oil, gas or minerals in Canada or elsewhere. It also applies to an entity that controls another entity that engages in these activities.

However, an entity is required to report only if it:

1. is listed on a stock exchange in Canada; or
2. (A.) has a place of business in Canada, does business in Canada or has assets in Canada and,
(B.) based on its consolidated financial statements, for at least one of its two most recent financial years, has at least **two of the following**:
 - i. CDN\$20 million in assets.
 - ii. CDN\$40 million in revenue.
 - iii. an average of 250 employees.

The Act does not specify that the thresholds in (i) to (iii) must relate to the relevant Canadian presence.

What is meant by “oil”, “gas” and “minerals”? The Act defines these terms as follows:

- Oil – Crude petroleum, bitumen and oil shale.
- Gas – Natural gas and includes all substances, other than oil, that are produced in association with natural gas.
- Minerals – All naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit materials, and all rare and precious minerals and metals..



What to report?

7 broad reporting categories you'll have to certify on

The reporting requirement applies to payments made:

- relating to the commercial development of oil, gas or minerals during a financial year that exceed \$100,000 (unless another amount is prescribed) and
- to any government in Canada or in a foreign state. This includes any government bodies at all levels of government, domestically and internationally (including Aboriginal entities in Canada).

Both monetary payments and payments “in kind” must be reported. The value of a payment in kind is the cost to the entity (or if no cost, then fair value) of the goods or services provided.

The following broad categories of payment must be interpreted and reported on:

- taxes, other than consumption taxes and personal income taxes;
- royalties;
- fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licenses, permits or concessions;
- production entitlements;
- bonuses, including signature, discovery and production bonuses;
- dividends, other than dividends paid as ordinary shareholders; or
- infrastructure improvements payments.

Other categories can be prescribed at the Minister’s discretion. Payments need to be reported on a project-level basis, the parameters of which are to be defined by an entity according to its particular industry and business context. The definition of some payments will be required to ascertain if a payment falls within the law or not.

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When and how are you required to report?

The Reporting Process

The Act does not include a reporting template. It is likely that a common reporting template will be developed for use in Canada, the European Union and the United States. The legislation recognizes that the reporting obligations imposed by another jurisdiction may achieve its intended purposes. As a result, reports used in that other jurisdiction may be provided to the Minister in satisfaction of the Canadian reporting requirements.

Wholly-owned subsidiaries in a corporate group that qualify as a single reporting entity can submit a group report, rather than individual reports, to satisfy their reporting requirements.

Reports must be filed within 150 days of an entity's financial year-end and will be publicly available for five years.



2 reasons suggesting why early preparation is key

Attestation and audit reporting

- A director or officer of the entity must attest that all information reported is true, accurate and complete. The Act does not currently include a reporting template. Guidance on templates is expected to be issued through the department of Natural Resource Canada (NRC) and industry groups in late 2015.
- ESTMA allows for the information to be certified by an independent accountant. The Minister may still request an audit in accordance with Canadian generally accepted auditing standards but this would be in support of management's certification.
- The Minister will nominate a body to oversee administration and enforcement. This body can request information to confirm compliance, including the results of any independent audit report.

Penalties/fines for the entity, directors and officers

- Fines for non-compliance are up to \$250,000 per day per offence and entities could be charged with multiple offences arising out of a single event that continues over the course of multiple days resulting in cumulative fines.



PwC can help you prepare for ESTMA

Early preparation will be key to developing rigorous controls and processes to capture payments as they occur to ensure full compliance can be achieved. It is important to note that a higher level of precision is required than for financial statements. We can support you from the initial assessment through implementation and reporting, with solutions tailored to your needs.

Our team has proven experience in:

- identifying government payments being made
- designing effective controls and processes to capture government payments as they occur
- assisting organizations in adapting their existing systems for transparent reporting coordination
- quantifying and categorizing the amount and nature of government payments
- performing procedures and producing reports to support management with their attestation that the information is true, accurate and complete

Our professionals in the oil and gas, and mining industries are eager to assist you by applying our hands-on experience working with government bodies around the globe.

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Are you ready?

- Have you read the Act and considered how the requirements apply to your entity? Are there requirements in the Act that you are unclear on how they apply to your entity or will require significant interpretation?
- Do you have the expertise within your entity to appropriately identify what constitutes a government body both within Canada and in the various foreign jurisdictions in which you operate?
- Do you have additional complexities due to arrangements with agents acting on your behalf resulting in indirect payments? Have you considered how these will be identified and tracked?
- How will you ensure that you have adequately captured all payments as required by the Act in order to attest that the information is true, accurate and complete?
- What will the volume and complexity of the information be and what will be the most effective and efficient way to gather the information to ensure accurate reporting?
- Do you have existing controls and processes that could be updated effectively to capture the payments as they occur?
- Are the processes currently designed in such a way that they can be easily adapted to handle the changing regulatory landscape your entity is currently operating in? Can these systems be adapted to monitor and track payments to Aboriginal groups?

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