

Response to DRAFT: Canada's New Plan on Open Government

PWYP-Canada would like to commend the Government of Canada for developing a draft action plan, entitled "Canada's New Plan on Open Government," that is aspirational and which recognizes the need to engage citizens and focus not just on open data, but on accountability. PWYP-Canada has engaged in the development of the last two actions plans, and the 2016-2018 differs in substance and style, offering concrete, and in many cases, ambitious commitments across a number of themes. In particular, PWYP-Canada would like to commend the government on its milestone under commitment 18 to train 500 open data leaders around the world. Achieving this milestone will make important contributions to efforts which aim to translate open data and transparency more broadly into accountability.

Unfortunately, that ambition did not translate into a strong commitment related to extractives sector data. On the other hand, PWYP-Canada was pleased to see a commitment that aims to improve the accessibility of public information about Canadian companies, which is a critical step in efforts to increase the transparency of beneficial ownership in Canada. However, this commitment is not situated within the context of anti-corruption, money laundering and tax evasion, nor does seek to increase the amount of public information about companies.

Extractive Sector Transparency Measures Act

Commitment 17, wherein the Government of Canada commits to implement the Extractive Sector Transparency Measures Act does not meet the requirements of an OGP commitment, as set forth in the 'Government Point of Contact Manual. In accordance with that manual and the principles of the Open Government Partnership, commitments must be: Ambitious, Relevant, and SMART.¹ As it stands, commitment 17 only commits to implement an Act that it has already been passed, implemented (through implementation tools), and put into force. In order, for a commitment to be ambitious, relevant and SMART, it must go beyond what has already been done. Commitment 17 does not seek to do that. PWYP-Canada, in its previous submission, provided some very compelling examples of specific commitments the government could take to ensure that the ESTMA data is readily accessible and actively used by Canadians and citizens around the world.

PWYP-Canada would like to take this opportunity to draw attention to the SMART milestones which will enhance access and use of ESTMA data. These were submitted during the initial round of consultations:

- Introduce a requirement that all company reports be filed exclusively in open, machine readable format

¹ SMART is the well-known acronym for specific, measurable, answerable, relevant and time-bound goals or in this case, commitments. See the Open Government Partnerships 'Government Point of Contact Manual' http://www.opengovpartnership.org/sites/default/files/ogp_2016_poc_manual.pdf

- Create a central database where individuals can search company reports for current and past years.
- Prepare and publish an annual consolidated report, with input from a multi-stakeholder working group.
- Develop and implement a plan, in conjunction with Canadian civil society, to increase awareness in Canada of extractive sector payment reporting.

The milestones outlined above are neither costly, nor overly burdensome. With sufficient financial support NRCAN is well placed to achieve these goals.

It is particularly important that Canada commit to require that all companies submit their reports in open, machine readable format following a standard template. NRCAN has developed an [excel template](#) in consultation with industry and civil society, however, this template is provided as one option in conjunction with a PDF template. With regulations in the UK, and a newly released [SEC final rule](#) both requiring that reports be filed in open data format, the Canadian government has ample reason to phase out the PDF template and require reporting in open data format. Furthermore, the Canadian government has established itself as a strong proponent of open data: hosting the Open Data Summit last year, chairing International Aid Transparency Initiative (IATI) this year, and implementing the [Directive on Open Government](#). Moreover, openness and transparency alongside the principle of 'open by default' is emphasized in every [ministerial mandate letter](#), and the ministerial mandate letter to the [President of the Treasury Board](#) calls upon that office to accelerate and expand open data initiatives.

Requiring that reports filed in compliance with ESTMA are made public in open data format and that the government takes steps to communicate that data to stakeholders is not only closely aligned with the leadership role the government has established on open data, but it also serves to support other commitments in the draft actions plan, including "Commitment 18: Support Openness and Transparency Initiatives around the World." Here, the government commits to train 500 open data leaders in government and civil society in developing countries. In order to train open data leaders, they need access to reliable sources of relevant data. ESTMA can be one of these sources of data, if the government commits to move towards a requirement that all reports be disclosed in open data format, provides access to all the reports through a single, central repository, and provides high-level analysis of the data as a point of entry.

Commitment 17 must be revised to reflect the Government of Canada's commitment to strive for open, accessible data that is widely utilized by government and civil society in Canada and abroad.

Beneficial Ownership

PWYP-Canada welcomes Commitment 12: Improve Public Information on Canadian Corporations. Creating a centralized registry of corporate information will greatly improve citizen access to corporate information. However, this commitment represents a missed opportunity and would be better situated within the appropriate domestic and international context; it equally can be made significantly more ambitious.

Context

Commitment 12 should be situated within the context of the global movement to fight corruption, money-laundering, tax evasion and tax fraud by increasing the transparency of the legal and beneficial owners of companies and trusts. Canada has recognized the importance of improving the transparency of legal and beneficial owners of companies at the G20 and the G7. The latest [G7 Action to Fight Corruption](#) recognized the importance of corporate ownership transparency in the fight against corruption and stated, “(e)nhancing transparency of beneficial ownership information to protect the integrity of the global financial system, and to prevent misuse of companies and legal arrangements including trusts for illicit purposes such as corruption, tax evasion and money-laundering.” Furthermore, a [risk assessment](#) undertaken by the Government of Canada identified Canadian corporations and express trusts as having ‘very high vulnerability’ to money laundering and terrorist financing because of the “ability of these entities to be used to conceal beneficial ownership, therefore facilitating the disguise and conversion of illicit proceeds.”

The transparency of the beneficial ownership of corporations and trusts is critical to ensure that Canada is active in the fight against domestic and international crime, but can also be instrumental in efforts to identify and investigate tax avoidance and fraud and recoup additional revenues. Combatting tax avoidance and tax fraud is a top priority for the Canada Revenue Agency, as established by the mandate letter sent to the [Minister of National Revenue](#) which commits the government to “(i)nvest additional resources to help the CRA crack down on tax evaders and work with international partners to adopt strategies to combat tax avoidance.”

Any efforts to improve access to corporate which will contribute to making Canadian corporations more transparent are best situated within broader efforts to combat tax evasion and fraud to fight money laundering.

Ambition

The milestones within commitment 12 can be made more ambitious and by establishing a clear commitment that Canada intends to create a public, centralized registry of the beneficial ownership of companies and trusts. In its current form, commitment 12 will not improve public information on Canadian companies; it will only improve the accessibility of that information. This is a missed opportunity. Canada has the chance to demonstrate that they are not stuck in neutral on beneficial ownership transparency, but instead are ready to take action.

A commitment to establish a publicly accessible, centralized registry of beneficial ownership information will have a multitude of benefits, some of which are identified in our submission to the [idea-generating](#) stage of the consultation. It should be noted that non-public means to share beneficial ownership information are not sufficient: private agreements to share information prevent public accountability by citizens and the media; they are slow and laborious; they do not necessarily include all law enforcement agencies, such as securities commissions; and they disadvantage poor countries whom often lack the institutional capacity to make formal requests and/or have not signed the appropriate agreements to share information. This latter point is important to Canada’s efforts on the global stage. As the

[consultation paper](#) on Canada's International Assistance Review recognizes "(i)mproved domestic resource mobilization—for example, through well-managed taxes and tariffs—can add significantly to the resources a country has at its disposal to deliver basic social services and confront poverty." As Canada provides development assistance to improve tax collection in our developing country partners, it is critical that efforts are taken at home to ensure that Canada does not allow for corporate secrecy that can foster criminality and tax evasion.

PWYP-Canada recommends that the Government of Canada expand commitment 12 to include a milestone which commits the government to work towards new requirements that will see companies and trusts publicly disclose legal and beneficial ownership information. This commitment will go a long way towards fulfilling Canada's G7 and G20 commitments, and towards establishing Canada's global leadership on tax avoidance and fraud. Furthermore it will signal to companies and individuals that Canada is not a good place to hide their money.

In PWYP-Canada submission during the idea-generating stage, we elaborated upon the following milestones:

- Publicly commit to create a centralized registry of the legal and beneficial owners of all Canadian-registered companies that is free, publicly accessible and made available in open, machine readable format (2016).
- Establish a formal working group with the provinces, alongside relevant government departments to establish and implement a plan to create a centralized registry of the beneficial and legal ownership (2016-2017).
- Establish a centralized registry of the legal and beneficial owners of all Canadian-registered companies, that is searchable, free, publicly accessible and made available in open, machine readable format (2017-2018).
- Revise the Canadian Business Corporations Act to eliminate bearer shares and require the conversion of all existing bearer shares to registered shares (2016).