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Elizabeth M. Murphy,
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Washington,
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**Subject: Disclosure of payments to governments (File Number S7-42-10; Release number 34-63549)**

March 2, 2011

Dear Ms Murphy,

We welcome the opportunity to comment on the Commission's proposed rules, pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd Frank Act**"), relating to disclosure of payments by resource extraction issuers.

Rio Tinto is a dual listed company, comprised of Rio Tinto plc, a London listed public company headquartered in the UK, and Rio Tinto Limited, which is listed on the Australian Stock Exchange, with executive offices in Melbourne, Australia (collectively, with its relevant subsidiaries and associated companies, "**Rio Tinto**"). Rio Tinto is a leading international mining group and is a foreign private issuer ("**FPI**") in the United States, with respect to securities listed on the New York Stock Exchange. Rio Tinto's major extractive products include aluminium, copper, diamonds, energy products, gold, industrial minerals (borates, titanium dioxide, salt and talc), and iron ore. Rio Tinto's world-wide activities include significant activities and operations in the United States. As a foreign private issuer, Rio Tinto uses the forms and rules designated for foreign private issuers when reporting to the Commission.

We support the commitment of the U.S. Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals. We have, however, some concerns relating to the Commission's proposed rules. Rio Tinto does not have any oil and gas activities, and therefore, we are responding solely in our capacity as a mining company.

We participate in the National Mining Association ("**NMA**") and have contributed to the NMA's separate response. We wish to further supplement the NMA's response, with certain additional responses, which are set out in **Appendix 1**, and summarised below. To facilitate the Commission's review, we have included, in the appendix, the captions and numbered questions from the Staff's proposed rules in bold, italicised text, and have provided our responses immediately following each numbered question.

*Extractive Industries Transparency Initiative ("**EITI**")*

Since its launch in 2002, Rio Tinto has expressly supported the EITI, which aims to strengthen governance by improving transparency and accountability in the extractive sector. Our business units support and promote the EITI, and its implementation, in those countries where we have projects or revenue generating mining operations. We fully support the EITI's transparency and accountability principles, which are similar to certain aspects of the proposed rules put forward by the Commission. Because the EITI also encompasses disclosure by governments, of payments they receive from companies, we believe it is more effective than the proposed rules at improving governance and eliminating corruption in both the private and public sectors. Therefore, we urge the Commission to follow the EITI principles to the fullest extent possible.

*Exemption for Foreign Private Issuers ("**FPIs**")*

We respectfully request that the Commission considers minimising any potential differences or discrepancies that may arise between the proposed disclosures and the other initiatives / regulations that are currently being developed. The International Accounting Standards Board ("**IASB**") is currently considering similar disclosures on payments to governments as part of its proposed new standard for the Extractive Industry. The European Union ("**EU**") is considering its own set of disclosure requirements relating to payments to governments.

Requiring foreign private issuers to comply with the Dodd Frank Act requirements would introduce another set of potentially conflicting disclosures into the annual reports of those companies, which could lead to FPIs having to issue different versions of their annual reports, with different disclosures in their annual report and Form 20-F (e.g. the current practice of disclosing ore reserves under JORC for the IFRS annual report, with the same data then having to be modified under Industry Guide 7 for the 20-F). This could lead to considerable confusion amongst investors, and we believe it would be an unwarranted burden for business.

*Definition of "project"*

We recommend defining a "project" as a reporting unit, similar to the definition used for segmental reporting under IFRS. Companies can then choose to provide disclosures at a lower level, if they have the additional capacity to do so. We do not believe that the term "project" should, as the Commission suggested in the proposing release, be defined to be "a project as that terms is used by a resource extraction issuer in the ordinary course of business", because the term project can have many different meanings at different levels within a group, and in different parts of the group. This definition might require an issuer to identify / reallocate / assign payments arbitrarily at a higher level of granularity than that at which it manages its payments to governments, which is typically at the country level.

*Definition of "de minimis"*

We agree with the NMA's proposal, that the term "not de minimis" should not be defined within the proposed rules. Instead, companies should be allowed to form their own interpretation of "de minimis", as long as the methodology is disclosed. If the Commission decides to define the term "de minimis", we recommend a percentage threshold for the quantitative assessment, to be determined and disclosed by each issuer, based on an assessment of its own specific risks, subject to an appropriate minimum threshold. This quantitative assessment should be supplemented with a qualitative assessment, consistent with the principles contained in the Commission's guidance in Staff Accounting Bulletin 99 ("SAB 99").

*Competitive disadvantage*

Approximately 60% of the largest companies within the Extractive industry, based on the Forbes Global 2000 (top 2,000 publicly listed companies globally), are U.S. listed companies (including FPIs) (please refer to our response to Section H: General request

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for comments, in **Appendix 1**). A sizeable proportion of the Extractive industry will, therefore, be unaffected by the proposed disclosures, and companies that list in the U.S. are, by contrast, competitively disadvantaged.

We are, however, committed to transparency, and we urge the Commission and the U.S. government to work with other regulators and governments around the world to issue regulations that are consistent with the EITI principles, to ensure that appropriate disclosures are made across all companies, and that investors have access to consistent types and levels of information. This will help to ensure that investors are able to base their investment making decisions on the same type and level of information. If non U.S.-listed issuers are able to provide limited or no disclosures, compared to U.S.-listed issuers, investors may end up making investment decisions based on incomplete information (which we believe is not the intent of the proposed disclosure requirements). As a result, the proposed rules may fail to achieve their disclosure and transparency goals.

*Availability of information*

For the proposed disclosures, we expect to collect information from over 100 individual operations in over 40 countries (which operations themselves have to consolidate data from individual sites), dealing with different accounting systems, multiple charts of accounts, foreign currencies, different financial statement layouts, etc. Data has to be extracted from the underlying ledgers, formatted into the required layout, and then uploaded onto a central system by local management. The data is then reviewed and analysed centrally by head office, and any queries would have to be resolved with local management, before the data is then consolidated and prepared for publication (assuming no audit is required). This takes time, and the information is not "readily available at the push of a button", contrary to what some parties may think (see **Appendix 1** for further details).

*Burden analysis (time and costs)*

We respectfully disagree with the Commission's estimate, that it will take FPIs 75 hours to prepare the proposed disclosures, with the cost of outside professionals at US$22,500 (75% of the burden at an average cost of US$400 per hour). As described in our response to the general request for comment in Section H (see **Appendix 1**), our internal estimates for the proposed disclosures are 40 to 80 hours for each of our business units and the central functions relevant to the disclosures, at a total cost of US$2 million to US$4 million per annum (assuming an audit is not required).

Please let us know if you have any queries. We would be pleased to discuss our responses with you.

Yours faithfully,

Ben Mathews
Company Secretary
Rio Tinto plc

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## Appendix 1: Detailed responses to certain questions in the Proposed Rules

### B Definition of "Resource Extraction Issuer"

***2. Would our proposed rules present undue costs to smaller reporting companies? If so, how could we mitigate those costs? Also, if our proposed rules present undue costs to smaller reporting companies, do the benefits of making their resource extraction payment information publicly available justify these costs? Should our rules provide more limited disclosure and reporting obligations for smaller reporting companies? If so, what should these limited requirements entail? Should our rules provide for a delayed implementation date for smaller reporting companies in order to provide them additional time to prepare for the requirement and the benefit of observing how larger companies comply?***

We believe that all issuers, regardless of size, should be required to comply with the same disclosure requirements, to ensure that appropriate disclosures are made across all companies, and that investors have access to consistent types and levels of information. This will help to ensure that investors are able to base their investment-making decisions on the same type and level of information. If smaller issuers are able to provide limited disclosures, compared to larger issuers, investors may end up making investment decisions based on incomplete information (which we believe is not the intent of the proposed disclosure requirements). As a result, the proposed rules may fail to achieve their disclosure and transparency goals.

***3. Should the Commission provide an exemption to allow foreign private issuers to follow their home country rules and disclose in their Form 20-F the required home country disclosure?***

We believe foreign private issuers ("FPIs") should be given the option to provide such disclosures in the manner that their home country requires, if their home country has a legal requirement for similar disclosures of payments to governments. This would be similar to the option provided to FPIs, to disclose their financial statements under IFRS in the Form 20-F, instead of US GAAP. If there are no local equivalents, then the exemption for FPIs need not apply.

The International Accounting Standards Board (IASB) is already considering similar disclosures as part of its proposed new standard for the Extractive Industry, and the European Union (EU) is considering its own set of disclosure requirements. Requiring FPIs to comply with the Dodd Frank Act requirements would introduce another set of potentially conflicting disclosures for stakeholders to consider.

This could lead to FPIs having to prepare similar tables, with two (or more) sets of disclosures, that could be similar, but with potentially different bases. This potentially causes confusion amongst investors, and would be an unwarranted burden of time and expense for businesses. An unfortunate example of such confusion, complexity and burden is the definitions for ore reserves. Ore reserves are currently disclosed under the Joint Ore Reserves Committee ("JORC") definitions for IFRS annual reports, but the same data has to be modified and recalculated under Industry Guide 7 for the Form 20-F filings. This can sometimes result in different quantities and values of reserves being disclosed, for the same issuer, relating to the same reporting period, an outcome that should be avoided.

***4. Should the rules apply to issuers that are owned or controlled by governments, as proposed? If so, why? If not, why not? Should the disclosure requirements be varied for such entities?***

We believe the proposed disclosure requirements should apply to issuers that are either owned or controlled by governments, to ensure that the appropriate disclosures are made across all companies, and that investors have access to consistent levels of information. This will help to ensure that investors are able to base their investment making decisions on the same type and level of information.

***5. General Instructions I and J to Form 10-K contain special provisions for the omission of certain information by wholly-owned subsidiaries and asset-backed issuers. Should either or both of these types of registrants be permitted to omit the proposed resource extraction payment disclosure in the annual reports on Form 10-K?***

As a foreign private issuer, we do not file reports on Form 10-K. We believe, however, that the disclosures should relate to the consolidated group as a whole, and not to individual entities. Wholly-owned subsidiaries should not be required to provide separate disclosures, as large multinational corporations can have thousands of individual entities, and to require disclosures by individual entities could be unnecessarily onerous and potentially confusing/misleading for stakeholders.

**C Definition of "Commercial Development of Oil, Natural Gas, or Minerals"**

***9. As noted, we do not believe the proposed definition of "commercial development of oil natural gas, or minerals" would include transportation to the extent that the oil, natural gas, or minerals are transported for purposes other than export, and we note that payments related to transportation activities generally are not included in EITI programs.[51] Should the definition include transportation of oil, natural gas, or minerals?[52] Should compression of natural gas be treated as processing, and therefore subject to the proposed rules, or transportation, and therefore not subject to the proposed rules?***

We believe that issuers should be allowed to choose whether or not to include transportation in their definition of commercial development of oil, natural gas or minerals, as long as they disclose the basis for their definition.

**D2 The "Not De Minimis" Requirement**

***27. Should we define "not de minimis" for purposes of the proposed rules? Why or why not?[72] What would be the advantages or disadvantages of not defining that term? If the final rules do not provide a definition, should an issuer be required to disclose the basis and methodology it used in assessing whether a payment amount was "not de minimis?"***

We agree with the NMA's proposal, that the term "not de minimis" should not be defined within the proposed rules. Instead, companies should be allowed to form their own interpretation of "de minimis", and if they choose to define "de minimis" as "not material", they should be allowed to apply the Commission's existing guidance on materiality (Staff Accounting Bulletin 99 ("**SAB 99**")). If companies choose to define "de minimis" at a lower level, then they should also be allowed to do so, as long as the methodology is disclosed. Please refer to our response to Question 33 for further comments on this matter.

***33. If a percentage threshold should be used to define "not de minimis," should the percentage be 1%, 2%, 3%, 4%, 5%, or a higher percentage? Should the definition use a percentage lower than 1%, such as 0.1%, 0.2%, 0.3%, 0.4%, or 0.5%?***

If the Commission decides to define the term "de minimis", we recommend a percentage threshold for the quantitative assessment, to be determined and disclosed by the issuer, based on an assessment of its own specific risks – for example, five per cent of the issuer's total payments to governments for the year. This should be subject to an appropriate minimum threshold, also to be determined and disclosed by the issuer. The quantitative assessment should be supplemented with a qualitative assessment, consistent with the principles contained in the Commission's guidance in SAB 99.

Please refer to the NMA's response to Question 32, for an illustration of why we believe having different thresholds for different projects or countries is not appropriate, as it might lead stakeholders to incorrectly assume that the disclosures had been prepared to the same level of precision, potentially causing confusion for investors.

## D3 The "Project" Requirement

***41. Should we define "project" to mean a project as that term is used by a resource extraction issuer in the ordinary course of business? What are the advantages and disadvantages of such an approach? If the final rules were to use such an approach, should an issuer be required to disclose the basis and methodology it used in defining what constitutes a project?***

We do not believe that the term "project" should, as the Commission suggested in the proposing release, be defined to be "a project as that term is used by a resource extraction issuer in the ordinary course of business", because the term project can have many different meanings at different levels within a group, and in different parts of the group. This might require an issuer to identify / reallocate / assign payments arbitrarily at a higher level of granularity than that at which it manages its payments to governments, which is typically at the country level.

Therefore, we recommend defining a "project" as a reporting unit, similar to the definition used for segmental reporting under IFRS. Issuers can then choose to provide disclosures at a lower level, if they have the additional capacity to do so.

***44. Should we permit issuers to treat operations in a country as a "project?" Would doing so be consistent with the statute?[81]***

To the extent payments that relate to more than one operation are made centrally and cannot be allocated to individual operations, we believe it is appropriate to aggregate those central payments and treat them as a central (or single) "project" at the country level.

## D4 Payments by "a Subsidiary...or an Entity under the Control of the Resource Extraction Issuer"

***51. Under the proposed rules, a resource extraction issuer would be required to provide disclosure for an entity if it is consolidated in the financial statements of the resource extraction issuer presented under U.S. GAAP (or other jurisdictional GAAP that requires a U.S. GAAP reconciliation) and IFRS as issued by the IASB***

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***because entities meeting the consolidation requirement generally also meet the definition of control. Are there circumstances under U.S. GAAP and IFRS that would render different consolidation results, such as proportionate consolidation, that we should consider? If so, please describe the circumstances and indicate how the different circumstances should be addressed in the new rules. We understand that entities and operations that are proportionately consolidated are viewed as consolidated entities or operations of an extractive issuer, while investments presented on the equity method are not viewed as consolidated entities or operations. Should our rules specifically include these concepts? For instance, should our rules treat equity investees differently even if they are controlled by the resource extraction issuer? Should our rules, as proposed, include equity investees that the issuer controls but does not consolidate?***

Under IFRS, entities under the full control of the issuer are fully consolidated, regardless of the economic ownership percentage. On the other hand, entities not under the full control of the issuer are not fully consolidated, even though the economic ownership may exceed 50%. Such entities are either proportionally consolidated (jointly controlled unincorporated assets), or equity accounted for (jointly controlled entities, associates).

Defining control by reference to an issuer's level of control over an asset or entity for accounting purposes could result in the disclosures, relating to associates and jointly controlled entities, exceeding 100 per cent of the issuer's actual payments to the government. For example, if an entity is a 60 per cent, fully consolidated, subsidiary of issuer A, and issuer B equity accounts for its 40 per cent minority interest in the same entity, issuer A will disclose 100 per cent of the entity's payments to governments, and issuer B will disclose 40 per cent of the entity's payments to governments, resulting in a total disclosure of 140 per cent of the actual amounts paid to governments.

If the Commission wants to align the proposed rules as closely with EITI as possible, which ultimately seeks to reconcile amounts paid by companies with amounts received by governments, this would require disclosures by issuers relating only to the subsidiaries under their full control for accounting purposes and proportionally consolidated entities, which would exclude equity-accounted units. Not requiring issuers to report payments made by entities that are equity-accounted for, for accounting purposes, would reduce the potential for investor confusion, due to the double-counting of payments made by the issuer's associates and jointly controlled entities. Otherwise, there might be reporting that is potentially misleading or confusing, which could lead to incorrect accusations of embezzlement, bribery and corruption, when in fact the double-counting is purely attributable to the accounting principles of consolidation.

***52. Are there instances, other than control in which a resource extraction issuer should have to disclose payments made by a subsidiary or other entity? If so, should we revise our proposal to mandate disclosure in those circumstances?[88] Would resource extraction issuers have access to payment information in those circumstances? Should our rules specify that an issuer would have to disclose payments made by a non-controlled entity only if the issuer is the operator of the joint venture or other project?[89] Would it be appropriate to require an issuer to disclose payments that correspond to its proportional interest in the joint venture rather than all of the payments made by or for the joint venture?[90]***

We agree that an issuer should not be required to provide the proposed disclosures, if it does not have access to the necessary information (please refer to our response to Question 51 above).

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## D5 Other Matters

***54. Would the disclosure requirement in Section 13(q) and the proposed rules potentially cause a resource extraction issuer to violate any host country's laws? Are there laws that currently prohibit such disclosure? Would the answer depend on the type of payment or the level of aggregation of the payment information required to be disclosed? If there are laws that currently prohibit the type of disclosure required by Section 13(q) and the proposed rules, please identify the specific law and the corresponding country.***

We believe that there should be an exemption, if such reporting would violate, or may reasonably be deemed to violate, host country laws. The proposed disclosures, for instance, may well constitute state secrets for a project in a specific country. The issuer should not be forced to choose between which law it will violate – the U.S. or the host country laws. If an issuer receives advice from counsel that the reporting of such information would potentially violate such host country laws, the Commission should exempt the issuer from making the disclosure. Alternatively, the Commission should create a safe harbour, allowing issuers to report the payments on a consolidated basis at the Group level, without specifically identifying the particular country, whose laws might be violated.

***60. Are there any other circumstances in which an exception to the disclosure requirement would be appropriate? For instance, would it be appropriate to provide an exception for commercially or competitively sensitive information,[100] or when disclosure would cause a resource extraction issuer to breach a contractual obligation?***

Whilst the payment of taxes to governments is not necessarily commercially or competitively sensitive information, we are concerned that the requirements could be extended to include information that could be commercially or competitively sensitive, e.g. cost or production information, for which some advocates have been campaigning.

Therefore, we believe an exception should be provided, if there is a genuine commercial concern relating to the disclosure of such information. The issuer would still have to disclose the fact that it was genuinely unable to provide the disclosures, due to the commercially or competitively sensitive status of the information. Please see our response to Question 54 for further details.

We believe the key issue is the risk of operating in a country, and if an issuer had genuine commercial concerns relating to the provision of the proposed disclosures, and it made a statement to that effect, then this, in itself, would be an indicator of the increased risk of operating in that country, which should be sufficient for stakeholders.

We also note that consistent with other disclosure laws, such as the Freedom of Information Act, we believe confidential treatment of highly sensitive and/or confidential information should be available to the issuers.

## F Disclosure Required and Form of Disclosure

## F2 Exhibits and Interactive Data Format Requirement

***80. Section 13(q) and our proposed rules require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. If the currency in which the payment was made differs from the issuer's reporting currency, should the rules require issuers to convert the payments to the issuer's***

***reporting currency at the applicable rate? If the rules should, as proposed, require disclosure of in kind payments, should the rules require in kind payments to be converted to the host country currency? Should the rules require in kind payments to be converted to the issuer's reporting currency at the applicable rate?***

***Should the rules require disclosure of the in kind payments in the form in which the payments were made and also require the payments to be converted to the issuer's reporting currency? Should we require issuers to provide a conversion to U.S. dollars for payments made in cash and in kind, and to electronically tag that information?***

We believe companies should be given the choice, to either disclose payments in the local currency, or to translate the payments into the reporting currency (because this is what most companies currently do, for their sustainable development disclosures), as long as the methodology for translation, and the exchange rates used for translation, are disclosed. We believe this is consistent with the legislation, because the requirement was for currency tags to be applied, and not necessarily that the disclosures should be prepared in the local or reporting currency.

## H General Request for Comment

***We request and encourage any interested person to submit comments regarding:***

- ***the proposed amendments that are the subject of this release;***
- ***additional or different changes; or***
- ***other matters that may have an effect on the proposals contained in this release.***

***We request comment from the point of view of companies, investors and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.***

### Competitive disadvantage

| *(US$ billions)* | No. | **Sales** | **Profits** | **Assets** | **Mkt Value** |
|---|---|---|---|---|---|
| Global 2000 | 2,000 | 29,965 | 1,411 | 124,025 | 31,409 |
| Extractive: total | 249 | 4,892 | 310 | 6,210 | 5,682 |
| Extractive: US[2] | 90 | 61% | 60% | 64% | 67% |
| **Extractive: non-US[2]** | **159** | **39%** | **40%** | **36%** | **33%** |

1 Source: Forbes Global 2000 – top 2,000 publicly listed companies globally (April 2010).

2 Includes foreign private issuers.

The table above shows the Forbes Global 2000 list of the top 2,000 publicly listed companies in the world (issued April 2010). This relates to publicly listed companies only, and does not include either privately held companies, or state-owned enterprises. Approximately 60% of the largest companies within the Extractive industry, based on the table above, are U.S. listed companies (including FPIs). A sizeable proportion of the

Extractive industry will, therefore, be unaffected by the proposed disclosures, and companies that list in the US are, by contrast, competitively disadvantaged. U.S. listed companies (including FPIs) appear to comprise approximately 60% of the largest companies within the Extractive industry.

We are, however, committed to transparency, and we urge the Commission and the U.S. government to work with other regulators and governments around the world to issue regulations that are consistent with the EITI principles, to ensure that appropriate disclosures are made across all companies in the extractive industry. This will help to ensure that investors are able to base their investment-making decisions on the same type and level of information, and will ensure that the objectives of transparency are more fully realised. If non U.S.-listed issuers are able to provide limited or no disclosures, compared to U.S.-listed issuers, investors may end up making investment decisions based on incomplete information (which we believe is not the intent of the proposed disclosure requirements). As a result, the proposed rules may fail to achieve their disclosure and transparency goals

**Availability of information**

There may be a misunderstanding that companies must already record most or all of the information on which these disclosures would be based, for their own reporting purposes, and that, barring a small initial set-up cost, the additional costs to provide the proposed disclosures would not be significant.

Based on our estimates, Rio Tinto would have to collect information from over 100 individual operations in over 40 countries (which operations themselves have to consolidate data from individual sites), dealing with different accounting systems, multiple charts of accounts, foreign currencies, specific layouts (different joint venture partners have different requirements). Data has to be extracted from the underlying ledgers, formatted into the required layout, and then uploaded onto a central system, which is then reviewed centrally, before it is then consolidated and prepared for publication. This takes time, and the information is not "readily available at the push of a button", contrary to what some parties may think.

In addition to the time required to collect and prepare the information, another main concern relates to the completeness of the amounts disclosed. For example, if we assumed an issuer had sales revenues of US$10 billion for 2009, and cash tax payments of US$3 billion, verifying the disclosures would involve checking not only the accuracy of the US$3 billion, but also the remaining US$7 billion, to ensure that all the items within the remainder have been correctly excluded from the proposed definition of payments to governments.

There may be a misunderstanding that the information required by the proposed rules is already available, because companies use it to submit tax returns. This is a simplistic view, and the problem is that tax payments for a specific year are not necessarily based on the actual accounting results for that year. They are also not necessarily based on the tax returns submitted for that year, because tax returns are submitted up to 12 months after the end of the accounting period, whereas payments can be spread out over a period of up to 24 months.

In the UK, the deadline for statutory accounts is 9 months after the end of the accounting period, the deadline for tax instalment payments is also 9 months and the deadline for corporation tax returns is 12 months after the end of the accounting period. Additionally, tax payments are made in instalments during the period, based on a company's estimate / forecast of its profits for the year, and any differences between the estimated amount and the actual amount are then trued-up the following year.

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Additionally, companies within the same group can share group relief, and offset over and under-payments within the tax grouping.

| | 2009 | 2010 | 2011 |
|---|---|---|---|
| Profits | 80 | 100 | 120 |
| Forecast tax for the year @ 30% | 24 | 30 | 36 |
| **Actual tax charge** | **30** | **25** | **40** |
| Instalment – 30 June | 6 | 7.5 | 9 |
| Instalment – 30 September | 6 | 7.5 | 9 |
| Instalment – 31 December | 6 | 7.5 | 9 |
| Instalment – 31 March | 6 | 7.5 | 9 |
| True-up – 30 September | 6 | (5) | 4 |
| Statutory accounts / instalments due by | 31 Oct 10 | 31 Oct 11 | 31 Oct 12 |
| Corporation tax return due by | 31 Dec 10 | 31 Dec 11 | 31 Dec 12 |
| **Tax payments during the year** | **18** | **34.5** | **29.5** |

Based on the illustration above, the tax payments during the year are not closely linked to the actual tax charge for the financial year, because the payments for each year are based on a combination of instalments for the prior year, instalments for the current year, and adjustments (true-ups) for differences relating to prior years.

If the proposed disclosures are to be included in the Group's annual report, which, for Rio Tinto, is approved internally during the first week of March, the disclosures will be based on information available as of February, before the statutory accounts are prepared; before the instalments can be trued-up; and before the corporation tax returns are submitted.

Therefore, we recommend that the final rules provide clarity on the timing and cut-off dates – i.e., information not readily available at the cut-off date for the annual report on Form 20-F should not be required to be included in the current year, but included in the following year, to reduce the burden on FPIs.

Furthermore, the issuer should have the option to provide necessary supplemental explanation on the basis for the reporting, as well as to provide corrections based on further data – such as where tax payments have been challenged and are later determined to be incorrect and/or changed (this is currently shown in the financial statements, as adjustments relating to prior years). We believe that the issuer should not be exposed to risks of potential securities law violations, for good-faith disputes with tax and other governmental authorities.

**Burden analysis (time and costs)**

We expect to spend approximately 100 – 200 hours centrally at head office, across different functions (e.g. financial reporting, sustainable development, tax, legal, etc), compiling and reviewing the annual reporting submissions from our business units, which then have to be analysed and prepared for disclosure. We expect to spend an additional 100 – 200 hours providing support to business units, helping them to understand the reporting requirements. This excludes the set-up time required to design and implement the reporting process, and to develop group policy/guidance to ensure consistency amongst business units.

We expect each business unit to spend approximately 40 – 80 hours each year, analysing the data in their local ledgers, and preparing the information to be submitted for consolidation centrally. Based on approximately 120 operating entities within the group, this is around 4,800 – 9,600 hours of effort required. Assuming a cost of US$400 per hour, this translates into approximately US$80,000 – US$160,000 p.a. in costs to be incurred centrally, with US$1,920,000 – US$3,840,000 p.a. to be incurred at the operating entities.

This estimate currently excludes the costs of any external audit, and we expect the estimated time and costs to increase significantly, if the proposed disclosures were to be audited.

We would also expect the time and costs to increase, if additional detail was required beyond the current proposal, e.g. further disaggregation / sub-categorisation beyond the six main categories of payments; a low threshold is applied to the proposed disclosures; the definition of a project is at a lower level than a "reporting unit" for segmental reporting; etc.