

## Gabon

### Summary of key findings

1. Consistent with the agreed methodology this first annual peer review covers: (i) the domestic legal and administrative framework, (ii) certain aspects of the exchange of information framework as well as (iii) certain aspects of the confidentiality and appropriate use of CbC reports. Gabon has primary law and is in the process of completing its legal and administrative framework to implement CbC Reporting. CbC requirements will apply for taxable years commencing on or after 1 January 2017. It is recommended that Gabon finalise the domestic legal and administrative framework and the exchange of information framework in relation to CbC requirements as soon as possible. For the moment, based on its primary legislation, Gabon's implementation of the Action 13 minimum standard meets the terms of reference for the year in review, except that it raises one definitional issue, one timing issue and one substantive issue in relation to its domestic legal and administrative framework. The report contains, therefore three recommendations to address these issues in addition to the general recommendation to finalise the domestic legal and administrative framework. In addition, Gabon should put in place an exchange of information framework as well as measures to ensure appropriate use.

#### *Part A: Domestic legal and administrative framework*

2. Gabon has primary legislation in place which implements the BEPS Action 13 minimum standard. Gabon indicates that further amendments are still needed in the primary legislation, which should be implemented in 2018. In addition, Gabon indicates that an administrative circular is currently being drafted and is needed to complete the domestic legal and administrative framework. CbC requirements apply for taxable years commencing on or after 1 January 2017. It is recommended that Gabon finalise the domestic legal and administrative framework in relation to CbC requirements as soon as possible. Specifically, it is recommended that Gabon:

- complete or introduce the definitions of “Ultimate Parent Entity”, “Constituent Entity”, “Group” and “MNE Group” which appear to be incomplete or missing,<sup>1</sup>
- publish the content of a CbC report,<sup>2</sup>
- complete or otherwise clarify the enforcement measures.<sup>3</sup>

#### *Part B: Exchange of information framework*

3. Gabon currently does not have a network for exchange of information in effect which would allow for Automatic Exchange of Information for CbC Reporting. Gabon is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”), signed on 3 July 2014, but which is not yet ratified. In respect of the terms of reference under review,<sup>4</sup> it is recommended that Gabon take steps to ratify the

Convention and have the Convention in force for taxable years starting as from 1 January 2017. Gabon is not a signatory of the CbC MCAA and it is recommended that it sign such agreement and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Gabon will not be exchanging CbC reports in 2018.

### *Part C: Appropriate use*

4. In respect of the terms of reference under review,<sup>5</sup> Gabon does not yet have measures in place relating to appropriate use. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Gabon will not be exchanging CbC reports in 2018.

## **Part A: The domestic legal and administrative framework**

5. Part A assesses the domestic legal and administrative framework of the reviewed jurisdiction by reviewing the (a) parent entity filing obligation, (b) the scope and timing of parent entity filing, (c) the limitation on local filing obligation, (d) the limitation on local filing in case of surrogate filing and (e) the effective implementation.

6. Gabon has primary legislation in place which will implement the BEPS Action 13 minimum standard.<sup>6</sup> Gabon indicates that further amendments are still needed in the primary legislation which should be implemented during the course of 2018. In addition, Gabon indicates that an administrative circular is currently being drafted and is needed to complete the domestic legal and administrative framework.

### *(a) Parent entity filing obligation*

Summary of terms of reference:<sup>7</sup> Introducing a CbC filing obligation which applies to Ultimate Parent Entities of MNE Groups above a certain threshold of revenue, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted (paragraph 8 (a) of the terms of reference).

7. Gabon has primary legislation which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups above a certain threshold of revenue.<sup>8</sup>

8. Gabon has introduced an obligation on the ultimate parent companies, or “head companies of groups”, to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover (excluding tax) is equal to or higher than XAF 491 967 750 000 (CFA Francs). The “head company of a group” means an entity of a group of multinational enterprises which holds, directly or indirectly, sufficient ownership interests in subsidiaries, so that it is required to prepare consolidated accounts according to the OHADA standards,<sup>9</sup> without any other constituent entity of such a group owning directly or indirectly such an interest as described above. It is noted that this definition does not include an entity that does not prepare Consolidated Financial Statements, but would be required to do so if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence (“deemed listing provision”). It is recommended that Gabon complete this definition in a manner consistent with the terms of reference.<sup>10</sup>

9. There is also no definition of a “MNE Group”, a “Group” and a “Constituent Entity” in Gabon’s primary legislation. It is recommended that Gabon introduce these definitions in its domestic legal and administrative framework.

10. Gabon indicates that further amendments will be made in the primary law: this will be done through the amended finance bill during the course of 2018. Gabon also indicates that a number of definitions will be introduced by way of an administrative circular which is currently being drafted.

11. It is recommended that Gabon complete its legal and administrative framework with respect to the parent entity filing obligation, including introducing or completing the definitions of “Ultimate Parent Entity”, “Constituent Entity”, “Group” and “MNE Group” in a manner consistent with the terms of reference.<sup>11</sup>

12. No other inconsistencies were identified with respect to Gabon’s domestic legal framework in relation with the parent entity filing obligation.

### *(b) Scope and timing of parent entity filing*

Summary of terms of reference: Providing that the filing of a CbC report by an Ultimate Parent Entity commences for a specific fiscal year; includes all of, and only, the information required; and occurs within a certain timeframe; and the rules and guidance issued on other aspects of filing requirements are consistent with, and do not circumvent, the minimum standard (paragraph 8 (b) of the terms of reference).

13. The first filing obligation for a CbC report in Gabon applies in respect of fiscal years beginning on or after 1 January 2017. The CbC report must be filed within 12 months from the end of the Ultimate Parent Entity’s fiscal year.<sup>12</sup>

14. Gabon indicates that the content of a CbC report and filing instructions will be detailed in the administrative circular which is currently being drafted.

15. It is recommended that Gabon publish the administrative circular as soon as possible, prescribing all of, and only, the information as contained in the template in the Action 13 Report (OECD, 2015 - Annex III to Chapter V - Transfer Pricing Documentation – Country-by-Country Report) with regard to each jurisdiction in which the MNE Group operates.

16. No other inconsistencies were identified with respect to the scope and timing of parent entity filing.

### *(c) Limitation on local filing obligation*

Summary of terms of reference: If local filing requirements have been introduced, that such requirements may apply only to Constituent Entities which are tax residents in the reviewed jurisdiction, whereby the content of the CbC report does not contain more than that required from an Ultimate Parent Entity, whereby the reviewed jurisdiction meets the confidentiality, consistency and appropriate use requirements, whereby local filing may only be required under certain conditions and whereby one Constituent Entity of an MNE Group in the reviewed jurisdiction is allowed to file the CbC report, satisfying the filing requirement of all other Constituent Entities in the reviewed jurisdiction (paragraph 8 (c) of the terms of reference).

17. Gabon has introduced local filing requirements as from the reporting period starting on or after 1 January 2017.

18. With respect to the conditions under which local filing may be required (paragraph 8 (c) iv. c) of the terms of reference (OECD, 2017), it is noted that one of the conditions to apply local filing in Gabon's legislation is that "*the jurisdiction of tax residence of the ultimate parent entity has suspended the automatic exchange, or has persistently filed to automatically communicate to Gabon the CbC reports it holds*".<sup>13</sup> Although this condition does not reflect the details of paragraphs 8 (c) iv. c) and 21 of the terms of reference (OECD, 2017) in particular in regard of the concept of "Systemic Failure", and may be interpreted in a broader meaning than the situation of a "Systemic Failure", Gabon confirms that it will apply this provision in accordance with the wording of these terms of reference and will clarify the definition of "Systemic Failure" in its administrative circular. As such, no recommendation is made but this aspect will be monitored.

19. No other inconsistencies were identified with respect to the limitation on local filing obligation.

***(d) Limitation on local filing in case of surrogate filing***

Summary of terms of reference: If local filing requirements have been introduced, that local filing will not be required when there is surrogate filing in another jurisdiction when certain conditions are met (paragraph 8 (d) of the terms of reference).

20. Gabon's local filing requirements will not apply if there is surrogate filing in another jurisdiction.<sup>14</sup> No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

***(e) Effective implementation***

Summary of terms of reference: Providing for enforcement provisions and monitoring relating to CbC Reporting's effective implementation including having mechanisms to enforce compliance by Ultimate Parent Entities and Surrogate Parent Entities, applying these mechanisms effectively, and determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed, and the number of Constituent Entities which have filed in case of local filing (paragraph 8 (e) of the terms of reference).

21. Gabon has legal mechanisms in place to enforce compliance with the minimum standard: there is a penalty<sup>15</sup> in relation to the failure to comply with the documentary requirements relating to CbC reports. It is however unclear whether this penalty would apply in cases of (i) non-filing, (ii) incorrect filing or (iii) incomplete filing of a CbC report.

22. There are no specific processes in place that would allow Gabon to take appropriate measures in case it is notified by another jurisdiction that such other jurisdiction has reason to believe that an error may have led to incorrect or incomplete information reporting by a Reporting Entity or that there is non-compliance of a Reporting Entity with respect to its obligation to file a CbC report. As no exchange of

CbC reports has yet occurred, no recommendation is made but this aspect will be further monitored.

23. It is recommended that Gabon complete or otherwise clarify the scope of enforcement measures.

### Conclusion

24. In respect of paragraph 8 of the terms of reference (OECD, 2017), Gabon has a domestic legal and administrative framework which is to be further completed, in order to impose and enforce CbC requirements on the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in Gabon. At the moment, based on its primary legislation, Gabon meets the terms of reference relating to the domestic legal and administrative framework, with the exception of (i) the definitions of “Ultimate Parent Entity”, “Constituent Entities”, “Group” and “MNE Group” (paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017)); (ii) the information to be reported in the CbC report (paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017)); and (iii) the enforcement measures (paragraph 8 (e) i. of the terms of reference (OECD, 2017)).

## Part B: The exchange of information framework

25. Part B assesses the exchange of information framework of the reviewed jurisdiction. For this first annual peer review process, this includes reviewing certain aspects of the exchange of information network as specified in paragraph 9 (a) of the terms of reference (OECD, 2017).

Summary of terms of reference: within the context of the exchange of information agreements in effect of the reviewed jurisdiction, having QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites (paragraph 9 (a) of the terms of reference).

26. Gabon does not yet have domestic legislation that permits the automatic exchange CbC reports. It is a Party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011) (“the Convention”), signed on 3 July 2014. The instruments of ratification have not yet been deposited, therefore the Convention will not be in effect at the start of the commencement of CbC Reporting in Gabon on 1 January 2017. This means that Gabon will not be able to exchange (either send or receive) CbC reports with respect to 2017 fiscal year and will not send or receive CbC reports under the Convention and CbC MCAA on the exchange date in 2019.

27. With respect to bilateral international agreements, Gabon is a Party to a few bilateral Double Tax Agreements (with Belgium, Canada, France and Morocco) which however do not allow Automatic Exchange of Information

28. Gabon has not signed the CbC MCAA and does not have Qualifying Competent Authority Agreements (QCAAs) in effect.

29. It is recommended that Gabon take steps to enable exchanges of CbC reports relating to the fiscal year 2017, in particular:

- bringing the Convention into force for 2017 (notably depositing its instrument of ratification, carrying on any internal process so that the Convention is brought into effect and lodging a Unilateral Declaration in order to align the effective date of the Convention with first intended exchanges of CbC reports under the CbC MCAA, as permitted under paragraph 6 of Article 28 of the Convention),
- signing the CbC MCAA and have QCAAs in effect.

### *Conclusion*

30. It is recommended that Gabon take steps to ratify the Convention and having it in effect for taxable years starting as from 1 January 2017, and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites. It is however noted that Gabon will not be exchanging CbC reports in 2018.

## **Part C: Appropriate use**

31. Part C assesses the compliance of the reviewed jurisdiction with the appropriate use condition. For this first annual peer review process, this includes reviewing certain aspects of appropriate use.

Summary of terms of reference: having in place mechanisms to ensure that CbC reports which are received through exchange of information or by way of local filing can be used only to assess high level transfer pricing risks and other BEPS-related risks and for economic and statistical analysis where appropriate; and cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence on the appropriateness of transfer prices or to make adjustments of income of any taxpayer on the basis of an allocation formula (paragraphs 12 (a) of the terms of reference).

32. Gabon does not yet have measures in place relating to appropriate use. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports. It is however noted that Gabon's primary legislation provides that "The CbC report submitted by a parent company should only be used by the tax administration for the purpose of assessing transfer pricing risks and other risks of erosion of the tax base and of transfer of profits in the country, including the risk of non-compliance with transfer pricing rules by members of the MNE group and, where appropriate, for economic and statistical analysis purposes".<sup>16</sup> The tax administration does not rely on country-by-country reporting to make transfer pricing adjustments. It is also noted that Gabon will not be exchanging CbC reports in 2018.

### *Conclusion*

33. It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information. It is however noted that Gabon will not be exchanging CbC reports in 2018.



## Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework – parent entity filing obligation – definitions – content of a CbC report - enforcement measures	It is recommended that Gabon finalise its domestic legal and administrative framework as soon as possible. Specifically, it is recommended that Gabon : - introduce or complete the definitions of an “Ultimate Parent Entity”, “MNE Group”, “Group” and “Constituent Entity” in a manner consistent with the terms of reference; - publish the administrative circular as soon as possible, prescribing all of, and only, the information as contained in the template in the Action 13 Report (OECD, 2015); - complete or otherwise clarify the scope of enforcement measures.
Part B	Exchange of information framework	It is recommended that Gabon take steps to ratify the Convention and have it in effect for taxable years starting as from 1 January 2017, and to sign the CbC MCAA and have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites.
Part C	Appropriate use	It is recommended that Gabon take steps to ensure that the appropriate use condition is met ahead of the first exchanges of CbC reports.

### Notes

<sup>1</sup> Paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017).

<sup>2</sup> Paragraph 8 (b) ii. and iv. of the terms of reference (OECD, 2017).

<sup>3</sup> Paragraph 8 (e) i. of the terms of reference (OECD, 2017).

<sup>4</sup> Paragraph 9 (a) of the terms of reference (OECD, 2017).

<sup>5</sup> Paragraph 12 (a) of the terms of reference (OECD, 2017).

<sup>6</sup> Article 831 ter nouveau of the Tax Code.

<sup>7</sup> The « summary of terms of reference » is provided to facilitate the reading of the report. Reference should be made to the exact wording of the terms of reference published in February 2017 (OECD, 2017).

<sup>8</sup> Article 831 ter nouveau of the Tax Code.

<sup>9</sup> Gabon refers to Article 173 of the Uniform Act relating to companies’ and economic interest groupings’ law.

<sup>10</sup> Paragraph 18 i. of the terms of reference (OECD, 2017).

<sup>11</sup> Paragraphs 8 (a) and 18 and 15 of the terms of reference (OECD, 2017).

<sup>12</sup> See paragraph 1 of Article 831 ter nouveau of the Tax Code.

<sup>13</sup> See paragraph 9 letter d. of Article 831 ter nouveau of the Tax Code.

<sup>14</sup> See paragraph 10 of Article 831 ter nouveau of the Tax Code which reads as follows: “However, the local constituent entity of a group shall not be required to file a CbC report if it can demonstrate that another entity of the group, considered as a surrogate parent entity located in a jurisdiction which has signed a qualifying competent authority agreement with Gabon relating to the exchange of CbC reports, has been designated to do so”.

<sup>15</sup> See Article P 1010 ter of the Tax Procedures Code: Failure to comply with the documentary requirements of the CbC reports subjects the company concerned to a penalty equal to 0.5 % of consolidated turnover (excluding tax), capped at XAF 100 000 000.

<sup>16</sup> See paragraph 6 of Article 831 ter nouveau of the Tax Code.

## References

- OECD (2017), “Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on Country-By-Country Reporting” in *BEPS Action 13 on Country-by-Country Reporting – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris.  
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From:

## Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)

Inclusive Framework on BEPS: Action 13

Access the complete publication at:

<https://doi.org/10.1787/9789264300057-en>

### Please cite this chapter as:

OECD (2018), “Gabon”, in *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264300057-36-en>

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